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House BILL NO. 325

INTRODUCED BY

Simpkins

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CERTAIN RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; DESIGNATING JURISDICTION AND VENUE FOR JUDICIAL REVIEW OF FINAL ADMINISTRATIVE DECISIONS OF THE BOARD; PROHIBITING INDEPENDENT CONTRACTORS FROM BECOMING MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE CALCULATION OF THE PERS SURVIVORSHIP BENEFIT; CLARIFYING THE DEFINITION OF DEPUTY SHERIFF FOR PURPOSES OF DETERMINING ELIGIBILITY FOR MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; ALLOWING THE BOARD TO USE MAILING LISTS OF PERSONS PARTICIPATING IN THE RETIREMENT SYSTEMS ADMINISTERED BY THE BOARD FOR PURPOSES OF MAILING MATERIALS ON BEHALF OF THIRD PARTIES FOR A FEE; AMENDING DISABILITY PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS ADMINISTERED BY THE BOARD TO CONFORM WITH PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT; PROVIDING FOR CONVERSION OF THE DISABILITY RETIREMENT OF A MEMBER OF THOSE SYSTEMS TO A SERVICE RETIREMENT WHEN THE MEMBER REACHES NORMAL RETIREMENT AGE; CLARIFYING THE TYPES OF INVESTMENTS THAT THE BOARD OF INVESTMENTS IS REQUIRED TO INVEST IN FOR THE SOCIAL SECURITY AGENCY ACCOUNT; AMENDING SECTIONS 2-6-109, 19-1-202, 19-1-602, 19-2-303, 19-2-401, 19-2-406, 19-3-403, 19-3-1015, 19-3-1205, 19-5-612, 19-6-612, 19-7-101, 19-7-612, 19-8-712, 19-9-904, AND 19-13-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE PROVISIONS."

#### STATEMENT OF INTENT

A statement of intent is required for this bill because 19-7-101 gives the public employees' retirement board authority to adopt rules that clarify the training and salary requirements for persons to be eligible for membership in the sheriffs' retirement system because of their appointment as deputy sheriffs.

It is the intent of the legislature that only full-time, professional law enforcement officers be eligible for membership in the sheriffs' retirement system. Because persons without the requisite training and salary required to be paid to deputy sheriffs have been erroneously reported to the sheriffs' retirement

1 system in the past, it is the intent of this bill to require the board to adopt rules that will reflect up-to-date  
2 training and salary requirements for appointed deputy sheriffs acting in a professional law enforcement  
3 capacity.

4 The legislature intends that persons employed in the following positions and who are not  
5 permanent, full-time law enforcement officers employed by county sheriffs not be eligible for membership  
6 in this retirement system: jailers; communications officers; other administrative, clerical, or support  
7 personnel; and other persons deputized to act as reserve deputies.

8 A statement of intent is further required for this bill because [section 2] gives the board authority  
9 to adopt rules to implement the provisions of the bill.

10 It is the intent of the legislature to provide the board with the option of generating fees from the  
11 sale of the use of mailing lists composed of participants in the retirement systems administered by the  
12 board. However, the legislature intends that such use be restricted by the board so that retirement system  
13 participants are neither deprived of their right of privacy concerning confidential information nor inundated  
14 with excessive mailings, particularly as concerns commercial interests, individual political candidates and  
15 ballot issues, or other specific political issues.

16 The legislature intends to allow the board discretion in promulgating rules concerning procedures  
17 to effectuate this intent. The legislature intends that the board have discretion to determine, for example,  
18 that mailings may not be allowed at all under this provision, that mailings may be tried for a limited period  
19 of time only, that mailings may be limited to tax-exempt organizations under section 501(c)(3) of the  
20 Internal Revenue Code, that specific types of mailings may be allowed, that mailings can be limited to  
21 specific categories of participants, or that participants have a right to be excluded from mailings on request.

22 The legislature intends that the fees generated by mailings for third parties not reduce the amount  
23 of appropriation otherwise allocated for the administration of the retirement system but be used as the  
24 board considers appropriate, such as for additional communication by the board with retirement system  
25 participants regarding retirement system rights, obligations, and similar issues.

26 A statement of intent is further required for this bill because general rulemaking authority is granted  
27 to the board to establish rules requiring employers to provide information germane to processing an  
28 application for disability retirement of a public employee retirement system member.

29 The Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq., requires employers  
30 to define the essential elements of each position and to make reasonable accommodations for employees

1 with disabilities.

2 In recognition of the purpose of the ADA, it is intended that the board, when determining if an  
3 applicant is totally and permanently disabled and thereby eligible for benefits from one of the retirement  
4 systems administered by it, consider whether the member is able to perform the essential elements of the  
5 position after the employer makes accommodations required by the ADA.

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8

9 **Section 1.** Section 2-6-109, MCA, is amended to read:

10 **"2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except  
11 as provided in subsections (3) through ~~(7)~~ (8), in order to protect the privacy of those who deal with state  
12 and local government:

13 (a) ~~no~~ an agency may not distribute or sell for use as a mailing list any list of persons without first  
14 securing the permission of those on the list; and

15 (b) ~~no~~ a list of persons prepared by the agency may not be used as a mailing list except by the  
16 agency or another agency without first securing the permission of those on the list.

17 (2) As used in this section, "agency" means any board, bureau, commission, department, division,  
18 authority, or officer of the state or a local government.

19 (3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a  
20 mailing list by examination of original documents or applications ~~which~~ that are otherwise open to public  
21 inspection.

22 (4) This section does not apply to the lists of registered electors and the new voter lists provided  
23 for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or  
24 to lists of persons holding driver's licenses provided for under 61-5-126.

25 (5) This section ~~shall~~ does not prevent an agency from providing a list to persons providing  
26 prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted  
27 ~~therefrom~~ from that chapter as provided in 20-30-102.

28 (6) This section does not apply to the right of access either by Montana law enforcement agencies  
29 or, by purchase or otherwise, of public records dealing with motor vehicle registration.

30 (7) This section does not apply to a corporate information list developed by the secretary of state

1 containing the name, address, registered agent, officers, and directors of business, nonprofit, religious,  
2 professional, and close corporations authorized to do business in this state.

3 (8) This section does not apply to the use by the public employees' retirement board of a mailing  
4 list of board-administered retirement system participants to send materials on behalf of a third party for a  
5 fee determined by rules of the board, provided that the mailing list is not released to the third party.

6 ~~(8)~~(9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."  
7

8 **NEW SECTION. Section 2. Third-party mailings by board to system participants -- rules.** (1) The  
9 board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are  
10 implemented, the board shall adopt rules governing means of implementation, including the specification  
11 of eligible third parties, appropriate materials, and applicable fees and procedures.

12 (2) Fees generated by third-party mailings must be deposited in an account in the state special  
13 revenue fund and must be appropriated to the board for the benefit of participants of retirement systems  
14 administered by the board.  
15

16 **Section 3.** Section 19-1-202, MCA, is amended to read:

17 "**19-1-202. Costs of administration.** All costs allocable to the administration of this chapter ~~shall~~  
18 must be charged to the ~~retirement division~~ pension trust fund of the public employees' retirement system.  
19 ~~So much of the~~ The amount of administrative costs as are not defrayed by interest and income earned upon  
20 the contribution account, which ~~has had~~ been credited to the ~~retirement division~~ pension trust fund, of the  
21 public employees' retirement system, as provided in 19-1-602, prior to July 1, 1987, ~~shall~~ must be paid  
22 to the state agency for deposit to the ~~retirement division~~ pension trust fund of the public employees'  
23 retirement system by each department of the state and by the participating divisions, instrumentalities, and  
24 political subdivisions of the state pro rata according to their respective contributions."  
25

26 **Section 4.** Section 19-1-602, MCA, is amended to read:

27 "**19-1-602. Management of account.** (1) All ~~moneys~~ money in the account ~~shall~~ must be mingled  
28 and undivided.

29 (2) Subject to the provisions of this chapter, the state agency ~~is vested with~~ has full power,  
30 authority, and jurisdiction over the account, including all ~~moneys~~ money and property or securities

1 belonging ~~thereto~~ to the account. It may perform any ~~and all~~ acts, whether or not specifically designated,  
 2 ~~which that~~ are necessary to the administration of the account and that are consistent with the provisions  
 3 of this chapter.

4 (3) The board of investments shall invest the account ~~in investments of the same character as are~~  
 5 ~~permitted by 17-6-211 for the investment of moneys in the long-term investment fund~~ as part of the unified  
 6 investment program described in Title 17, chapter 6, part 2. The state agency shall credit all interest and  
 7 income earned on the account in excess of that which, in its judgment, may be needed for the purposes  
 8 set forth in 19-1-603 to the state general fund.

9 (4) ~~No later than June 30, 1986~~ By the end of the fiscal year during which all payments determined  
 10 to be due and payable from the state to the social security administration have been paid, the state agency  
 11 shall ~~calculate an amount equal to the earned income from current and previous fiscal years in the~~  
 12 ~~contribution account, less all payments and credits due or owing, and transfer this amount~~ any funds  
 13 remaining in the contribution account to the state general fund."

14

15 **Section 5.** Section 19-2-303, MCA, is amended to read:

16 "19-2-303. **Definitions.** Unless the context requires otherwise, for each of the retirement systems  
 17 subject to this chapter, the following definitions apply:

18 (1) "Accumulated contributions" means the sum of all the regular and any additional contributions  
 19 made by a member in a system, together with the regular interest on the contributions.

20 (2) "Active member" means a member who is an employee of an employer and who is making the  
 21 required contributions to the system based on the member's compensation paid by the employer.

22 (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory  
 23 manner to represent the present value of the benefits to be derived from the additional service to be  
 24 credited based on the most recent actuarial valuation for the system and the age, years until retirement,  
 25 and current salary of the member.

26 (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the  
 27 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded  
 28 annually.

29 (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a  
 30 retirement system over the present value of future normal costs in that retirement system.

1 (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

2 (7) "Additional contributions" means contributions made by a member to purchase various types  
3 of optional service credit as allowed by the applicable retirement system.

4 (8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a  
5 lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and  
6 are not subject to periodic or one-time increases.

7 (9) "Benefit" means the service or disability retirement or survivorship benefit provided by a  
8 retirement system.

9 (10) "Board" means the public employees' retirement board provided for in 2-15-1009.

10 (11) "Contingent annuitant" means a person designated to receive a continuing annuity after the  
11 death of a retired member.

12 (12) "Credited service" or "service credit" means the periods of time for which the required  
13 contributions have been made to a retirement system and that are used to calculate service or disability  
14 retirement or survivorship benefits under a retirement system.

15 (13) "Department" means the department of administration.

16 (14) "Designated beneficiary" means the person designated by a member to receive any  
17 survivorship benefits or lump-sum payments upon the death of the member, including annuities derived  
18 from the benefits or payments.

19 (15) "Disability" means a total inability of the member to perform the member's duties by reason  
20 of physical or mental incapacity. The disability must be incurred while the member is an active member  
21 and must be one of permanent duration or of extended and uncertain duration, as determined by the board  
22 on the basis of competent medical opinion.

23 (16) "Division" means the public employees' retirement division of the department of administration.

24 (17) "Employee" means a person who is employed by an employer in any capacity and whose salary  
25 is paid by the employer.

26 (18) "Employer" means a governmental entity participating in a retirement system enumerated in  
27 19-2-302 on behalf of its eligible employees.

28 (19) "Essential elements of the position" means fundamental job duties. An element may be  
29 considered essential because of but not limited to the following factors:

30 (a) the position exists to perform the element;

1            (b) there are a limited number of employees to perform the element; or

2            (c) the element is highly specialized.

3            ~~(19)~~(20) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

4            ~~(20)~~(21) "Inactive member" means a member who has terminated service with an employer and has  
5 not withdrawn the member's accumulated contributions from the retirement system.

6            ~~(21)~~(22) "Member" means any person with accumulated contributions and service credited with a  
7 retirement system or receiving a retirement benefit on account of the person's previous service credited  
8 in a retirement system.

9            ~~(22)~~(23) "Membership service" or "years of service" means the periods of service that are used to  
10 determine eligibility for retirement or other benefits.

11            ~~(23)~~(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost  
12 method required to fund accruing benefits for members of a retirement system during any year in the future.  
13 Normal cost does not include any portion of the supplemental costs of a retirement system.

14            ~~(24)~~(25) "Pension" means payments for life derived from contributions to a system made from state-  
15 or employer-controlled funds.

16            ~~(25)~~(26) "Pension trust fund" means a fund established to hold the contributions, income, and  
17 assets of a retirement system in public trust.

18            ~~(26)~~(27) "Regular contributions" means contributions required from members under a retirement  
19 system.

20            ~~(27)~~(28) "Regular interest" means interest at the rate set from time to time by the board.

21            ~~(28)~~(29) "Retirement" or "retired" means the status of a member who has terminated from service  
22 with a retirement benefit under a retirement system.

23            ~~(29)~~(30) "Retirement benefit" means the periodic benefit payable following service, early, or  
24 disability retirement under a retirement system.

25            ~~(30)~~(31) "Retirement system" means one of the public employee retirement systems enumerated  
26 in 19-2-302.

27            ~~(31)~~(32) "Service" means employment of an employee in a position covered by a retirement system.

28            ~~(32)~~(33) "Supplemental cost" means an element of the total actuarial cost of a retirement system  
29 arising from benefits payable for service performed prior to the inception of the retirement system or prior  
30 to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to

1 fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are  
2 included in the unfunded actuarial liabilities of the retirement system.

3 ~~(33)~~(34) "Survivorship benefit" means payments for life to the beneficiary of a deceased member  
4 who died while in service under a retirement system.

5 ~~(34)~~(35) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement  
6 system's actuarial liabilities at any given point in time over the value of its cash and investments on that  
7 same date.

8 ~~(35)~~(36) "Vested member" or "vested" means a member or the status of a member who has  
9 attained the minimum membership service requirements to be eligible for retirement benefits under a  
10 retirement system.

11 ~~(36)~~(37) "Written application" means a written instrument duly executed and filed with the board  
12 and containing all information required by the board, including such proofs of age as the board considers  
13 necessary."  
14

15 **Section 6.** Section 19-2-401, MCA, is amended to read:

16 "**19-2-401. Location of board -- jurisdiction and venue for judicial review -- quorum -- officers and**  
17 **employees.** (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial  
18 review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County,  
19 unless otherwise stipulated by the parties.

20 (2) A quorum of the board is three members.

21 (3) The board shall elect one of its members presiding officer. The board may appoint a committee  
22 of one or more of its members to perform routine acts, such as retirement of members and fixing of  
23 retirement benefits, approval of death claims, and correction of records necessary in the administration of  
24 the systems in accordance with the provisions of chapters 3, 5 through 9, 12, 13, and 15 of this title and  
25 in accordance with the rules of the board. The attorney general is the legal counsel for the board."  
26

27 **Section 7.** Section 19-2-406, MCA, is amended to read:

28 "**19-2-406. Determination of disability by board -- compliance with federal law -- conversion to**  
29 **service retirement benefit -- rules.** (1) The board shall determine whether a member has become disabled.  
30 In the discharge of its duty regarding determinations, the board, any member of the board, or any



1 authorized representative of the board may order medical examinations, conduct hearings, administer oaths  
 2 and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance  
 3 of witnesses and the production of books, papers, correspondence, memoranda, and other records  
 4 considered necessary as evidence in connection with a claim for disability retirement.

5 (2) The board shall adopt rules requiring employers to identify and explain the essential elements  
 6 of a member's position, any accommodations that were or can be made in compliance with the Americans  
 7 With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

8 ~~(2)(3)~~ The board shall retain medical personnel to advise it in assessing the nature and extent of  
 9 disabling conditions while reviewing claims for disability retirement.

10 (4) The disability retirement benefit paid to a member must be converted to a service retirement  
 11 benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum  
 12 age required for normal service retirement. The board shall notify the member in writing as to the change  
 13 in status."

14  
 15 **Section 8.** Section 19-3-403, MCA, is amended to read:

16 "19-3-403. **Exclusions from membership.** The following persons may not become members of the  
 17 retirement system:

18 (1) inmates of state institutions;

19 (2) persons in state institutions principally for the purpose of training, but who receive  
 20 compensation;

21 (3) independent contractors, ~~unless there is a written contract that specifies the creation of an~~  
 22 ~~employer-employee relationship for purposes of retirement coverage under the retirement system;~~

23 (4) persons who are members of any other retirement or pension system supported wholly or in  
 24 part by funds of the United States government, any state government, or political subdivision of the state  
 25 and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent  
 26 a person from receiving credit for the same service in two retirement systems supported wholly or in part  
 27 by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503.  
 28 A member of the retirement system who, because of employment by the state, is required to become a  
 29 member of any other system described in this subsection is considered, solely for the purposes of making  
 30 regular contributions, as permanently separated from service. Exclusion under this subsection is subject

1 to the following exceptions:

2 (a) When an employer has entered into a collective bargaining agreement that includes provisions  
3 for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by  
4 the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for  
5 membership in the retirement system.

6 (b) For the purpose of this subsection (4), persons receiving pensions, retirement allowances, or  
7 other payments from any source on account of employment other than as an employee are not considered,  
8 because of receipt, members of any other retirement or pension system.

9 (5) court commissioners, elected officials, or appointive members of any board or commission who  
10 serve the state or any contracting employer intermittently and who are paid on a per diem basis;

11 (6) full-time students employed at and attending the same public elementary school, high school,  
12 ~~vocational-technical center~~ school of technology, or community college or any unit of the state university  
13 system, except that a person excluded from membership as a student of a public community college or a  
14 unit of the state university system who later becomes a member by otherwise becoming an employee may  
15 affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the  
16 board in writing after becoming a member and become eligible to receive credited service for the excluded  
17 service under the provisions of 19-3-505."

18

19 **Section 9.** Section 19-3-1015, MCA, is amended to read:

20 "**19-3-1015. Medical examination of disability retiree -- cancellation and reinstatement.** (1) The  
21 board may, in its discretion, require a disabled member to undergo a medical examination. The examination  
22 must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the  
23 retired member and the board. Upon the basis of the examination, the board shall determine whether the  
24 disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements  
25 of either the duties of the position held by the member when the member retired or the duties position  
26 proposed to be assigned to the member. If the board determines the member is not incapacitated or if the  
27 member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

28 (2) If the board determines that a disabled member should no longer be subject to medical review,  
29 the board may grant service retirement status to the member without recalculating the monthly benefit.  
30 The board shall notify the member in writing as to the change in status. If the disabled member disagrees

1 with the board's determination, the member may request the board to reconsider its action. The request  
2 for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

3 (3) A member whose disability retirement benefit is canceled because the board has determined  
4 that the member is no longer incapacitated must be reinstated to the position held by the member  
5 immediately before the member's retirement or to a position in the same classification with duties within  
6 the member's capacity if the member was an employee of the state or of the university. If the member was  
7 an employee of a contracting employer, the board shall notify the proper official of the contracting employer  
8 that the disability retirement benefit has been canceled and that the former employee is eligible for  
9 reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any  
10 right to reinstatement to duty that the former employee may have or claim to have.

11 (4) If a member whose disability retirement benefit is canceled is not reemployed in a position  
12 subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to  
13 have been discontinued coincident with the commencement of the member's retirement benefit."  
14

15 **Section 10.** Section 19-3-1205, MCA, is amended to read:

16 "**19-3-1205. Amount of survivorship benefit.** The survivorship benefit payable to a member's  
17 designated beneficiary is the actuarial equivalent of either:

18 (1) the accrued portion of the ~~service~~ early retirement benefit that would have been payable to the  
19 member commencing at age ~~60~~ 50 pursuant to ~~19-3-904~~ 19-3-906, if the member had not attained age  
20 ~~60~~ 50 or earned 25 years of service credit at the time of death; ~~or~~

21 (2) if the deceased member had attained age 50 or earned 25 years of service credit at the time  
22 of death, the early retirement benefit that would have been payable to the member if the member had  
23 retired immediately prior to death; or

24 ~~(2)(3)~~ if the deceased member had attained age 60 or earned 30 years of service credit at the time  
25 of death, the service retirement benefit that would have been payable to the member if the member had  
26 retired immediately prior to death."  
27

28 **Section 11.** Section 19-5-612, MCA, is amended to read:

29 "**19-5-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
30 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.

1 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
2 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall  
3 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
4 elements of the position held by the recipient when the recipient was retired. If the board determines that  
5 the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the  
6 recipient's disability retirement benefit must be canceled.

7 (2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated  
8 may not prejudice any right of the recipient to a retirement benefit other than a disability retirement  
9 benefit."  
10

11 **Section 12.** Section 19-6-612, MCA, is amended to read:

12 **"19-6-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board may  
13 require the recipient of a disability retirement benefit to undergo a medical examination. The examination  
14 must be made by a physician or surgeon at the recipient's place of residence or at another place mutually  
15 agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether  
16 the recipient can perform the ~~duties~~ essential elements of the position held by the recipient when the  
17 recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability  
18 retirement benefit must be canceled when the recipient is offered a position under subsection (3). If the  
19 recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be  
20 canceled.

21 (2) If the board determines that a recipient of a disability retirement benefit should no longer be  
22 subject to medical review, the board may grant a service retirement status to the recipient without  
23 recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change  
24 in status. If the recipient disagrees with the board's determination, the recipient may request the board to  
25 reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt  
26 of the notice of the status change.

27 (3) A recipient whose disability retirement benefit is canceled because the board has determined  
28 that the recipient is no longer incapacitated must be reinstated to the position held by the recipient  
29 immediately before the recipient's retirement or to a position in the same classification within the recipient's  
30 capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice

1 any right to reinstatement to duty that the recipient may have or claim to have.

2 (4) The department of justice may request a medical or psychological review as to the ability of  
3 the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the  
4 department of justice shall pay the cost of the review."

5

6 **Section 13.** Section 19-7-101, MCA, is amended to read:

7 "19-7-101. **Definitions.** Unless the context requires otherwise, the following definitions apply in  
8 this chapter:

9 (1) "Compensation" means remuneration paid for services to a member out of funds controlled by  
10 an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

11 (2) "Final average salary" means the average monthly compensation received by a member for any  
12 3 years of continuous service from which contributions were deducted or, in the event that a member has  
13 not served 3 years, the total compensation earned divided by the number of months served. Lump-sum  
14 payments for sick leave and annual leave paid to an employee upon termination of employment may be  
15 used in the calculation of a retirement benefit only to the extent that they are used to replace, on a  
16 month-for-month basis, the normal compensation for a month or months included in the calculation of the  
17 final average salary. A lump-sum payment may not be added to a single month's compensation.

18 (3) "Investigator" means a person who is employed as a criminal investigator or as a gambling  
19 investigator for the department of justice.

20 (4) "Sheriff" means any elected or appointed county sheriff, or undersheriff, or regularly any  
21 appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff. The board shall  
22 adopt rules incorporating both the peace officers standards and training council's current law enforcement  
23 training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs  
24 who are eligible for membership in this retirement system."

25

26 **Section 14.** Section 19-7-612, MCA, is amended to read:

27 "19-7-612. **Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
28 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.  
29 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
30 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall

1 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
2 elements of the position held by the recipient when the recipient was retired. If the board determines that  
3 the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the  
4 recipient is offered a position under subsection (2). If the recipient refuses to submit to a medical  
5 examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of  
6 the determination of the board.

7 (2) A person other than an elected official whose disability retirement benefit is canceled because  
8 the person is no longer incapacitated must be reinstated to the position held by the person immediately  
9 before the person's retirement or to a position in the same classification within the person's capacity,  
10 whichever is first open. The fact that the person was retired for disability may not prejudice any right to  
11 reinstatement to duty ~~which~~ that the person may have or claim to have.

12 (3) The public body required to reinstate a person under subsection (2) may request a medical or  
13 psychological review as to the ability of the member to return to work as a member of the sheriff's  
14 department. If the board's findings are upheld, the public body shall pay the cost of the review."  
15

16 **Section 15.** Section 19-8-712, MCA, is amended to read:

17 **"19-8-712. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
18 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.  
19 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
20 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall  
21 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
22 elements of the position held by the recipient when the recipient retired. If the board determines that the  
23 recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the  
24 recipient is offered a position under subsection (3). If the recipient refuses to submit to a medical  
25 examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of  
26 the determination of the board.

27 (2) If the board determines that a recipient of a disability retirement benefit should no longer be  
28 subject to medical review, the board may grant a service retirement status to the recipient without  
29 recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change  
30 in status. If the recipient disagrees with the board's determination, the recipient may request the board to

1 reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt  
2 of the notice of the status change.

3 (3) A recipient whose disability retirement benefit is canceled because the board has determined  
4 that the recipient is no longer incapacitated must be reinstated to the position held by the recipient  
5 immediately before the recipient's retirement or to a position in the same classification within the recipient's  
6 capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice  
7 any right to reinstatement to duty that the recipient may have or claim to have.

8 (4) The department of fish, wildlife, and parks may request a medical or psychological review as  
9 to the ability of the recipient to return to work as a game warden. If the board's findings are upheld, the  
10 department of fish, wildlife, and parks shall pay the cost of the review."  
11

12 **Section 16.** Section 19-9-904, MCA, is amended to read:

13 **"19-9-904. Termination of benefit.** The board, in its discretion, may require the recipient of a  
14 disability retirement benefit to undergo a medical examination. The examination must be made by a  
15 physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the  
16 board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or  
17 mental capacity, whether the recipient can perform the ~~duties~~ essential elements of the position held by  
18 the recipient when the recipient was retired. If an inactive member is determined by the board to be no  
19 longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive  
20 member is offered a position under 19-9-905. If the inactive member refuses to submit to a medical  
21 examination, the inactive member's disability retirement benefit must cease as of the date of the  
22 determination. The inactive member must be notified of the determination by the board. The board may  
23 review the status of an inactive member at any time."  
24

25 **Section 17.** Section 19-13-804, MCA, is amended to read:

26 **"19-13-804. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
27 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination  
28 at the board's expense. The examination must be made by a physician or surgeon at the recipient's place  
29 of residence or at another place mutually agreed on. Based on the results of the examination, the board  
30 shall determine whether the recipient has the physical or mental capacity to perform the ~~duties~~ essential

1 elements required by the recipient's former position. If the board determines that the recipient is not  
2 incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability  
3 retirement benefit must be canceled. The board shall notify the recipient of this determination and the  
4 cancellation of the recipient's benefit.

5 (2) The cancellation of a disability retirement benefit because a member is no longer incapacitated  
6 does not prejudice any right of the member to a service retirement benefit."  
7

8 **NEW SECTION. Section 18. Codification instruction.** [Section 2] is intended to be codified as an  
9 integral part of Title 19, chapter 2, part 4, and the provisions of Title 19, chapter 2, part 4, apply to  
10 [section 2].  
11

12 **NEW SECTION. Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are  
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
14 applications, the part remains in effect in all valid applications that are severable from the invalid  
15 applications.  
16

17 **NEW SECTION. Section 20. Retroactive applicability.** (1) [Section 13] applies retroactively, within  
18 the meaning of 1-2-109, to any service performed by an individual for a county sheriff's department.

19 (2) [Sections 5, 7, 9, 11, 12, and 14 through 17] apply retroactively, within the meaning of  
20 1-2-109, to initial disability determinations and reviews of ongoing disability status on and after January  
21 1, 1994.  
22

23 **NEW SECTION. Section 21. Effective date.** [This act] is effective on passage and approval.  
24

-END-



## 1 HOUSE BILL NO. 325

2 INTRODUCED BY SIMPKINS

3 BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CERTAIN  
6 RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD;  
7 DESIGNATING JURISDICTION AND VENUE FOR JUDICIAL REVIEW OF FINAL ADMINISTRATIVE  
8 DECISIONS OF THE BOARD; PROHIBITING INDEPENDENT CONTRACTORS FROM BECOMING MEMBERS  
9 OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE CALCULATION OF THE PERS  
10 SURVIVORSHIP BENEFIT; CLARIFYING THE DEFINITION OF DEPUTY SHERIFF FOR PURPOSES OF  
11 DETERMINING ELIGIBILITY FOR MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; ALLOWING THE  
12 BOARD TO USE MAILING LISTS OF PERSONS PARTICIPATING IN THE RETIREMENT SYSTEMS  
13 ADMINISTERED BY THE BOARD FOR PURPOSES OF MAILING MATERIALS ON BEHALF OF THIRD PARTIES  
14 FOR A FEE; AMENDING DISABILITY PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS  
15 ADMINISTERED BY THE BOARD TO CONFORM WITH PROVISIONS OF THE AMERICANS WITH  
16 DISABILITIES ACT; PROVIDING FOR CONVERSION OF THE DISABILITY RETIREMENT OF A MEMBER OF  
17 THOSE SYSTEMS TO A SERVICE RETIREMENT WHEN THE MEMBER REACHES NORMAL RETIREMENT  
18 AGE; CLARIFYING THE TYPES OF INVESTMENTS THAT THE BOARD OF INVESTMENTS IS REQUIRED TO  
19 INVEST IN FOR THE SOCIAL SECURITY AGENCY ACCOUNT; PROVIDING FOR THE DIRECT TRANSFER  
20 OF MEMBERS' CONTRIBUTIONS BETWEEN PUBLIC RETIREMENT SYSTEMS; AMENDING SECTIONS  
21 2-6-109, 19-1-202, 19-1-602, 19-2-303, 19-2-401, 19-2-406, 19-2-704, 19-3-403, 19-3-509, 19-3-511,  
22 19-3-1015, 19-3-1205, 19-5-612, 19-6-612, 19-6-802, 19-7-101, 19-7-612, 19-7-802, 19-8-712,  
23 19-8-902, 19-9-405, 19-9-904, AND 19-13-404, 19-13-804, AND 19-20-409, MCA; AND PROVIDING AN  
24 IMMEDIATE EFFECTIVE DATE AND RETROACTIVE PROVISIONS."

25  
26 STATEMENT OF INTENT

27 A statement of intent is required for this bill because 19-7-101 gives the public employees'  
28 retirement board authority to adopt rules that clarify the training and salary requirements for persons to be  
29 eligible for membership in the sheriffs' retirement system because of their appointment as deputy sheriffs.

30 It is the intent of the legislature that only full-time, professional law enforcement officers be eligible

1 for membership in the sheriffs' retirement system. Because persons without the requisite training and  
2 salary required to be paid to deputy sheriffs have been erroneously reported to the sheriffs' retirement  
3 system in the past, it is the intent of this bill to require the board to adopt rules that will reflect up-to-date  
4 training and salary requirements for appointed deputy sheriffs acting in a professional law enforcement  
5 capacity.

6 The legislature intends that persons employed in the following positions and who are not  
7 permanent, full-time law enforcement officers employed by county sheriffs not be eligible for membership  
8 in this retirement system: jailers; communications officers; other administrative, clerical, or support  
9 personnel; and other persons deputized to act as reserve deputies.

10 A statement of intent is further required for this bill because [section 2] gives the board authority  
11 to adopt rules to implement the provisions of the bill.

12 It is the intent of the legislature to provide the board with the option of generating fees from the  
13 sale of the use of mailing lists composed of participants in the retirement systems administered by the  
14 board. However, the legislature intends that such use be restricted by the board so that retirement system  
15 participants are neither deprived of their right of privacy concerning confidential information nor inundated  
16 with excessive mailings, particularly as concerns commercial interests, individual political candidates and  
17 ballot issues, or other specific political issues.

18 The legislature intends to allow the board discretion in promulgating rules concerning procedures  
19 to effectuate this intent. The legislature intends that the board have discretion to determine, for example,  
20 that mailings may not be allowed at all under this provision, that mailings may be tried for a limited period  
21 of time only, that mailings may be limited to tax-exempt organizations under section 501(c)(3) of the  
22 Internal Revenue Code, that specific types of mailings may be allowed, that mailings can be limited to  
23 specific categories of participants, or that participants have a right to be excluded from mailings on request.

24 The legislature intends that the fees generated by mailings for third parties not reduce the amount  
25 of appropriation otherwise allocated for the administration of the retirement system but be used as the  
26 board considers appropriate, such as for additional communication by the board with retirement system  
27 participants regarding retirement system rights, obligations, and similar issues.

28 A statement of intent is further required for this bill because general rulemaking authority is granted  
29 to the board to establish rules requiring employers to provide information germane to processing an  
30 application for disability retirement of a public employee retirement system member.

1           The Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq., requires employers  
2 to define the essential elements of each position and to make reasonable accommodations for employees  
3 with disabilities.

4           In recognition of the purpose of the ADA, it is intended that the board, when determining if an  
5 applicant is totally and permanently disabled and thereby eligible for benefits from one of the retirement  
6 systems administered by it, consider whether the member is able to perform the essential elements of the  
7 position after the employer makes accommodations required by the ADA.

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11           **Section 1.** Section 2-6-109, MCA, is amended to read:

12           "**2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except  
13 as provided in subsections (3) through ~~(7)~~ (8), in order to protect the privacy of those who deal with state  
14 and local government:

15           (a) ~~no~~ an agency may not distribute or sell for use as a mailing list any list of persons without first  
16 securing the permission of those on the list; and

17           (b) ~~no~~ a list of persons prepared by the agency may not be used as a mailing list except by the  
18 agency or another agency without first securing the permission of those on the list.

19           (2) As used in this section, "agency" means any board, bureau, commission, department, division,  
20 authority, or officer of the state or a local government.

21           (3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a  
22 mailing list by examination of original documents or applications ~~which~~ that are otherwise open to public  
23 inspection.

24           (4) This section does not apply to the lists of registered electors and the new voter lists provided  
25 for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or  
26 to lists of persons holding driver's licenses provided for under 61-5-126.

27           (5) This section ~~shall~~ does not prevent an agency from providing a list to persons providing  
28 prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted  
29 ~~therefrom~~ from that chapter as provided in 20-30-102.

30           (6) This section does not apply to the right of access either by Montana law enforcement agencies

1 or, by purchase or otherwise, of public records dealing with motor vehicle registration.

2 (7) This section does not apply to a corporate information list developed by the secretary of state  
3 containing the name, address, registered agent, officers, and directors of business, nonprofit, religious,  
4 professional, and close corporations authorized to do business in this state.

5 (8) This section does not apply to the use by the public employees' retirement board of a mailing  
6 list of board-administered retirement system participants to send materials on behalf of a third party for a  
7 fee determined by rules of the board, provided that the mailing list is not released to the third party.

8 ~~(8)(9)~~ A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."  
9

10 **NEW SECTION. Section 2. Third-party mailings by board to system participants -- rules.** (1) The  
11 board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are  
12 implemented, the board shall adopt rules governing means of implementation, including the specification  
13 of eligible third parties, appropriate materials, and applicable fees and procedures.

14 (2) Fees generated by third-party mailings must be deposited in an account in the state special  
15 revenue fund and must be appropriated to the board for the benefit of participants of retirement systems  
16 administered by the board.

17  
18 **Section 3.** Section 19-1-202, MCA, is amended to read:

19 "**19-1-202. Costs of administration.** All costs allocable to the administration of this chapter ~~shall~~  
20 must be charged to the retirement division pension trust fund of the public employees' retirement system.  
21 ~~So much of the~~ The amount of administrative costs as are not defrayed by interest and income earned upon  
22 the contribution account, which ~~has had~~ has had been credited to the ~~retirement division pension trust fund,~~ of the  
23 public employees' retirement system, as provided in 19-1-602, prior to July 1, 1987, ~~shall must~~ be paid  
24 to the state agency for deposit to the ~~retirement division pension trust fund~~ of the public employees'  
25 retirement system by each department of the state and by the participating divisions, instrumentalities, and  
26 political subdivisions of the state pro rata according to their respective contributions."  
27

28 **Section 4.** Section 19-1-602, MCA, is amended to read:

29 "**19-1-602. Management of account.** (1) All ~~moneys~~ money in the account ~~shall must~~  
30 and undivided.

1 (2) Subject to the provisions of this chapter, the state agency ~~is vested with~~ has full power,  
 2 authority, and jurisdiction over the account, including all ~~moneys~~ money and property or securities  
 3 belonging ~~thereto to the account~~. It may perform any ~~and all~~ acts, whether or not specifically designated,  
 4 ~~which that~~ are necessary to the administration of the account and that are consistent with the provisions  
 5 of this chapter.

6 (3) The board of investments shall invest the account ~~in investments of the same character as are~~  
 7 ~~permitted by 17-6-211 for the investment of moneys in the long term investment fund~~ as part of the unified  
 8 investment program described in Title 17, chapter 6, part 2. The state agency shall credit all interest and  
 9 income earned on the account in excess of that which, in its judgment, may be needed for the purposes  
 10 set forth in 19-1-603 to the state general fund.

11 (4) ~~No later than June 30, 1986~~ By the end of the fiscal year during which all payments determined  
 12 to be due and payable from the state to the social security administration have been paid, the state agency  
 13 shall ~~calculate an amount equal to the earned income from current and previous fiscal years in the~~  
 14 ~~contribution account, less all payments and credits due or owing, and transfer this amount~~ any funds  
 15 remaining in the contribution account to the state general fund."  
 16

17 **Section 5.** Section 19-2-303, MCA, is amended to read:

18 **"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems  
 19 subject to this chapter, the following definitions apply:

20 (1) "Accumulated contributions" means the sum of all the regular and any additional contributions  
 21 made by a member in a system, together with the regular interest on the contributions.

22 (2) "Active member" means a member who is an employee of an employer and who is making the  
 23 required contributions to the system based on the member's compensation paid by the employer.

24 (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory  
 25 manner to represent the present value of the benefits to be derived from the additional service to be  
 26 credited based on the most recent actuarial valuation for the system and the age, years until retirement,  
 27 and current salary of the member.

28 (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the  
 29 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded  
 30 annually.

1 (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a  
2 retirement system over the present value of future normal costs in that retirement system.

3 (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

4 (7) "Additional contributions" means contributions made by a member to purchase various types  
5 of optional service credit as allowed by the applicable retirement system.

6 (8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a  
7 lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and  
8 are not subject to periodic or one-time increases.

9 (9) "Benefit" means the service or disability retirement or survivorship benefit provided by a  
10 retirement system.

11 (10) "Board" means the public employees' retirement board provided for in 2-15-1009.

12 (11) "Contingent annuitant" means a person designated to receive a continuing annuity after the  
13 death of a retired member.

14 (12) "Credited service" or "service credit" means the periods of time for which the required  
15 contributions have been made to a retirement system and that are used to calculate service or disability  
16 retirement or survivorship benefits under a retirement system.

17 (13) "Department" means the department of administration.

18 (14) "Designated beneficiary" means the person designated by a member to receive any  
19 survivorship benefits or lump-sum payments upon the death of the member, including annuities derived  
20 from the benefits or payments.

21 (15) "Disability" means a total inability of the member to perform the member's duties by reason  
22 of physical or mental incapacity. The disability must be incurred while the member is an active member  
23 and must be one of permanent duration or of extended and uncertain duration, as determined by the board  
24 on the basis of competent medical opinion.

25 (16) "Division" means the public employees' retirement division of the department of administration.

26 (17) "Employee" means a person who is employed by an employer in any capacity and whose salary  
27 is paid by the employer.

28 (18) "Employer" means a governmental entity participating in a retirement system enumerated in  
29 19-2-302 on behalf of its eligible employees.

30 (19) "Essential elements of the position" means fundamental job duties. An element may be

1 considered essential because of but not limited to the following factors:

2 (a) the position exists to perform the element;

3 (b) there are a limited number of employees to perform the element; or

4 (c) the element is highly specialized.

5 ~~(19)~~(20) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

6 ~~(20)~~(21) "Inactive member" means a member who has terminated service with an employer and has  
7 not withdrawn the member's accumulated contributions from the retirement system.

8 ~~(21)~~(22) "Member" means any person with accumulated contributions and service credited with a  
9 retirement system or receiving a retirement benefit on account of the person's previous service credited  
10 in a retirement system.

11 ~~(22)~~(23) "Membership service" or "years of service" means the periods of service that are used to  
12 determine eligibility for retirement or other benefits.

13 ~~(23)~~(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost  
14 method required to fund accruing benefits for members of a retirement system during any year in the future.  
15 Normal cost does not include any portion of the supplemental costs of a retirement system.

16 ~~(24)~~(25) "Pension" means payments for life derived from contributions to a system made from state-  
17 or employer-controlled funds.

18 ~~(25)~~(26) "Pension trust fund" means a fund established to hold the contributions, income, and  
19 assets of a retirement system in public trust.

20 ~~(26)~~(27) "Regular contributions" means contributions required from members under a retirement  
21 system.

22 ~~(27)~~(28) "Regular interest" means interest at the rate set from time to time by the board.

23 ~~(28)~~(29) "Retirement" or "retired" means the status of a member who has terminated from service  
24 with a retirement benefit under a retirement system.

25 ~~(29)~~(30) "Retirement benefit" means the periodic benefit payable following service, early, or  
26 disability retirement under a retirement system.

27 ~~(30)~~(31) "Retirement system" means one of the public employee retirement systems enumerated  
28 in 19-2-302.

29 ~~(31)~~(32) "Service" means employment of an employee in a position covered by a retirement system.

30 ~~(32)~~(33) "Supplemental cost" means an element of the total actuarial cost of a retirement system

1 arising from benefits payable for service performed prior to the inception of the retirement system or prior  
 2 to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to  
 3 fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are  
 4 included in the unfunded actuarial liabilities of the retirement system.

5 ~~(33)~~(34) "Survivorship benefit" means payments for life to the beneficiary of a deceased member  
 6 who died while in service under a retirement system.

7 ~~(34)~~(35) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement  
 8 system's actuarial liabilities at any given point in time over the value of its cash and investments on that  
 9 same date.

10 ~~(35)~~(36) "Vested member" or "vested" means a member or the status of a member who has  
 11 attained the minimum membership service requirements to be eligible for retirement benefits under a  
 12 retirement system.

13 ~~(36)~~(37) "Written application" means a written instrument duly executed and filed with the board  
 14 and containing all information required by the board, including such proofs of age as the board considers  
 15 necessary."  
 16

17 **Section 6.** Section 19-2-401, MCA, is amended to read:

18 "**19-2-401. Location of board -- jurisdiction and venue for judicial review -- quorum -- officers and**  
 19 **employees.** (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial  
 20 review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County,  
 21 unless otherwise stipulated by the parties.

22 (2) A quorum of the board is three members.

23 (3) The board shall elect one of its members presiding officer. The board may appoint a committee  
 24 of one or more of its members to perform routine acts, such as retirement of members and fixing of  
 25 retirement benefits, approval of death claims, and correction of records necessary in the administration of  
 26 the systems in accordance with the provisions of chapters 3, 5 through 9, 12, 13, and 15 of this title and  
 27 in accordance with the rules of the board. The attorney general is the legal counsel for the board."  
 28

29 **Section 7.** Section 19-2-406, MCA, is amended to read:

30 "**19-2-406. Determination of disability by board -- compliance with federal law -- conversion to**



1 **service retirement benefit -- rules.** (1) The board shall determine whether a member has become disabled.  
 2 In the discharge of its duty regarding determinations, the board, any member of the board, or any  
 3 authorized representative of the board may order medical examinations, conduct hearings, administer oaths  
 4 and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance  
 5 of witnesses and the production of books, papers, correspondence, memoranda, and other records  
 6 considered necessary as evidence in connection with a claim for disability retirement.

7 (2) The board shall adopt rules requiring employers to identify and explain the essential elements  
 8 of a member's position, any accommodations that were or can be made in compliance with the Americans  
 9 With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

10 ~~(2)(3)~~ (3) The board shall retain medical personnel to advise it in assessing the nature and extent of  
 11 disabling conditions while reviewing claims for disability retirement.

12 (4) The disability retirement benefit paid to a member must be converted to a service retirement  
 13 benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum  
 14 age required for normal service retirement. The board shall notify the member in writing as to the change  
 15 in status."

16

17 **SECTION 8. SECTION 19-2-704, MCA, IS AMENDED TO READ:**

18 **"19-2-704. Purchasing service credits allowed.** (1) Subject to the rules promulgated by the board,  
 19 an eligible member may elect to contribute amounts in addition to the mandatory employee contributions  
 20 required by the retirement system in which the member participates for the purpose of purchasing service  
 21 credits as provided by the statutes governing the retirement system.

22 (2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802,  
 23 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all  
 24 or a portion of the member's accumulated contributions on deposit in a pension trust fund from which  
 25 service is being transferred to the pension trust fund of another plan in which service is being credited.  
 26 The transfer of contributions may include both taxed contributions and tax-deferred contributions and  
 27 interest. However, if less than all of the accumulated contributions on deposit in a pension trust fund is  
 28 being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis,  
 29 with the remainder refunded to the member. The transferring agency shall identify at the time of the  
 30 transfer the taxed and tax-deferred amounts being transferred."

1           **Section 9.** Section 19-3-403, MCA, is amended to read:

2           "**19-3-403. Exclusions from membership.** The following persons may not become members of the  
3 retirement system:

4           (1) inmates of state institutions;

5           (2) persons in state institutions principally for the purpose of training, but who receive  
6 compensation;

7           (3) independent contractors, ~~unless there is a written contract that specifies the creation of an~~  
8 ~~employer-employee relationship for purposes of retirement coverage under the retirement system;~~

9           (4) persons who are members of any other retirement or pension system supported wholly or in  
10 part by funds of the United States government, any state government, or political subdivision of the state  
11 and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent  
12 a person from receiving credit for the same service in two retirement systems supported wholly or in part  
13 by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503.  
14 A member of the retirement system who, because of employment by the state, is required to become a  
15 member of any other system described in this subsection is considered, solely for the purposes of making  
16 regular contributions, as permanently separated from service. Exclusion under this subsection is subject  
17 to the following exceptions:

18           (a) When an employer has entered into a collective bargaining agreement that includes provisions  
19 for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by  
20 the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for  
21 membership in the retirement system.

22           (b) For the purpose of this subsection (4), persons receiving pensions, retirement allowances, or  
23 other payments from any source on account of employment other than as an employee are not considered,  
24 because of receipt, members of any other retirement or pension system.

25           (5) court commissioners, elected officials, or appointive members of any board or commission who  
26 serve the state or any contracting employer intermittently and who are paid on a per diem basis;

27           (6) full-time students employed at and attending the same public elementary school, high school,  
28 ~~vocational-technical center~~ school of technology, or community college or any unit of the state university  
29 system, except that a person excluded from membership as a student of a public community college or a  
30 unit of the state university system who later becomes a member by otherwise becoming an employee may

1 affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the  
2 board in writing after becoming a member and become eligible to receive credited service for the excluded  
3 service under the provisions of 19-3-505."  
4

5 **SECTION 10. SECTION 19-3-509, MCA, IS AMENDED TO READ:**

6 "19-3-509. **Qualification of other Montana public service.** (1) (a) A member may, at any time  
7 before retirement, make a written election with the board to qualify as service in this retirement system all  
8 or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens',  
9 firefighters' unified, or municipal police officers' retirement system for which the member either has  
10 received or is eligible to receive a refund of membership contributions. To qualify this service, the member  
11 shall contribute to the pension trust fund the actuarial cost of granting the service in the public employees'  
12 retirement system, as determined by the board, based on the most recent actuarial valuation minus the  
13 employer contribution provided in subsection (1)(b). This service may not be credited in more than one  
14 retirement system under Title 19.

15 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
16 the member's former retirement system to the public employees' retirement system an amount equal to the  
17 employer contributions made during the member's service but no more than an amount equal to the normal  
18 cost contribution rate minus the employee contribution rate in the public employees' retirement system,  
19 according to the most recent actuarial valuation, based on the salaries earned by the employee as a member  
20 of the former system.

21 (2) (a) A member may, at any time before retirement, make a written election with the board to  
22 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
23 The member shall provide salary and employment documentation certified by the member's former public  
24 employer. The board may grant service credit upon contribution by the employee of the actuarial cost of  
25 granting this service in the public employees' retirement system, as determined by the board, based on the  
26 most recent actuarial valuation of the system.

27 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
28 full-time public service.

29 (c) This service may not be credited in more than one retirement system under Title 19."  
30

1           **SECTION 11. SECTION 19-3-511, MCA, IS AMENDED TO READ:**

2           **"19-3-511. Transfer of service credits and contributions from teachers' retirement system. (1)**

3     A An active member may at any time before retirement make a written election with the board to qualify  
4     in the public employees' retirement system all of the member's service in the teachers' retirement system  
5     for which the member either has received or is eligible to receive a refund. The amount that must be paid  
6     or transferred to the retirement system to qualify this service under this section is the sum of subsections  
7     (2) and (3).

8           (2) ~~The~~ In addition to the amounts directly paid or transferred by the member under subsection (3),  
9     the teachers' retirement system shall transfer to the public employees' retirement system an amount equal  
10    to 72% of the amount determined in accordance with subsection (3) payable by the member.

11          (3) ~~The employee member shall pay either directly or by transferring contributions on account with~~  
12    the teachers' retirement system an amount equal to the ~~employee's~~ member's accumulated contributions  
13    at the time ~~the employee terminated~~ that active membership was terminated with the teachers' retirement  
14    system, ~~as defined in 19-20-302,~~ plus accrued interest. Interest must be calculated from the date of  
15    termination until payment is received by the public employees' retirement system, based on the interest  
16    tables in use by the teachers' retirement system.

17          (4) The amount of service credit granted in subsection (1) must be on a month-by-month basis.  
18    Military service credit transferred from the teachers' retirement system must be included in the 5-year  
19    maximum military service credit provided for in 19-3-503.

20          (5) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount  
21    of service credit qualified under this section and the amount paid to the retirement system under  
22    subsections (2) and (3).

23          (6) ~~If a~~ an active member who also has service credit in the teachers' retirement system dies before  
24    the member qualifies this service in the public employees' retirement system and if the service credits from  
25    both systems, when combined, entitle the member's designated beneficiary to a survivorship benefit, the  
26    payment of the survivorship benefit is the liability of the public employees' retirement system. Before  
27    payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees'  
28    retirement system the contributions necessary to qualify this service in the public employees' retirement  
29    system as provided in subsections (2) and (3)."

30

1           **Section 12.** Section 19-3-1015, MCA, is amended to read:

2           **"19-3-1015. Medical examination of disability retiree -- cancellation and reinstatement.** (1) The  
3 board may, in its discretion, require a disabled member to undergo a medical examination. The examination  
4 must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the  
5 retired member and the board. Upon the basis of the examination, the board shall determine whether the  
6 disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements  
7 of either the ~~duties~~ of the position held by the member when the member retired or the ~~duties~~ position  
8 proposed to be assigned to the member. If the board determines the member is not incapacitated or if the  
9 member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

10           (2) If the board determines that a disabled member should no longer be subject to medical review,  
11 the board may grant service retirement status to the member without recalculating the monthly benefit.  
12 The board shall notify the member in writing as to the change in status. If the disabled member disagrees  
13 with the board's determination, the member may request the board to reconsider its action. The request  
14 for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

15           (3) A member whose disability retirement benefit is canceled because the board has determined  
16 that the member is no longer incapacitated must be reinstated to the position held by the member  
17 immediately before the member's retirement or to a position in the same classification with duties within  
18 the member's capacity if the member was an employee of the state or of the university. If the member was  
19 an employee of a contracting employer, the board shall notify the proper official of the contracting employer  
20 that the disability retirement benefit has been canceled and that the former employee is eligible for  
21 reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any  
22 right to reinstatement to duty that the former employee may have or claim to have.

23           (4) If a member whose disability retirement benefit is canceled is not reemployed in a position  
24 subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to  
25 have been discontinued coincident with the commencement of the member's retirement benefit."  
26

27           **Section 13.** Section 19-3-1205, MCA, is amended to read:

28           **"19-3-1205. Amount of survivorship benefit.** The survivorship benefit payable to a member's  
29 designated beneficiary is the actuarial equivalent of ~~either~~:

30           (1) the accrued portion of the ~~service~~ early retirement benefit that would have been payable to the

1 member commencing at age ~~60~~ 50 pursuant to ~~19-3-904~~ 19-3-906, if the member had not attained age  
 2 ~~60~~ 50 or earned 25 years of service credit at the time of death; or

3 (2) if the deceased member had attained age 50 or earned 25 years of service credit at the time  
 4 of death, the early retirement benefit that would have been payable to the member if the member had  
 5 retired immediately prior to death; or

6 ~~(2)(3)~~ if the deceased member had attained age 60 or earned 30 years of service credit at the time  
 7 of death, the service retirement benefit that would have been payable to the member if the member had  
 8 retired immediately prior to death."

9  
 10 **Section 14.** Section 19-5-612, MCA, is amended to read:

11 **"19-5-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
 12 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.  
 13 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
 14 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall  
 15 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
 16 elements of the position held by the recipient when the recipient was retired. If the board determines that  
 17 the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the  
 18 recipient's disability retirement benefit must be canceled.

19 (2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated  
 20 may not prejudice any right of the recipient to a retirement benefit other than a disability retirement  
 21 benefit."

22  
 23 **Section 15.** Section 19-6-612, MCA, is amended to read:

24 **"19-6-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board may  
 25 require the recipient of a disability retirement benefit to undergo a medical examination. The examination  
 26 must be made by a physician or surgeon at the recipient's place of residence or at another place mutually  
 27 agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether  
 28 the recipient can perform the ~~duties~~ essential elements of the position held by the recipient when the  
 29 recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability  
 30 retirement benefit must be canceled when the recipient is offered a position under subsection (3). If the

1 recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be  
2 canceled.

3 (2) If the board determines that a recipient of a disability retirement benefit should no longer be  
4 subject to medical review, the board may grant a service retirement status to the recipient without  
5 recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change  
6 in status. If the recipient disagrees with the board's determination, the recipient may request the board to  
7 reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt  
8 of the notice of the status change.

9 (3) A recipient whose disability retirement benefit is canceled because the board has determined  
10 that the recipient is no longer incapacitated must be reinstated to the position held by the recipient  
11 immediately before the recipient's retirement or to a position in the same classification within the recipient's  
12 capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice  
13 any right to reinstatement to duty that the recipient may have or claim to have.

14 (4) The department of justice may request a medical or psychological review as to the ability of  
15 the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the  
16 department of justice shall pay the cost of the review."

17

18 **SECTION 16. SECTION 19-6-802, MCA, IS AMENDED TO READ:**

19 **"19-6-802. Qualification of other Montana public service.** (1) (a) A member may, at any time  
20 before retirement, make a written election with the board to qualify all or any portion of the member's  
21 service in the public employees', sheriffs', game wardens', firefighters' unified, or municipal police officers'  
22 retirement system for which the member either has received or is eligible to receive a refund of the  
23 member's membership contributions. To qualify this service, the member shall contribute to the pension  
24 trust fund the actuarial cost of granting the service credit in the highway patrol officers' retirement system,  
25 as determined by the board, based on the most recent actuarial valuation minus the employer contribution  
26 provided in subsection (1)(b). This service may not be credited in more than one retirement system under  
27 Title 19.

28 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
29 the member's former retirement system to the highway patrol officers' retirement system an amount equal  
30 to the employer contributions made during the member's service but no more than an amount equal to the

1 normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement  
2 system, according to the most recent actuarial valuation.

3 (2) (a) A member may, at any time before retirement, make a written election with the board to  
4 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
5 The member shall provide compensation and employment documentation certified by the member's public  
6 employer. The board shall grant service credit subject to rules adopted by the board upon contribution by  
7 the employee of the actuarial cost of granting this service in the highway patrol officers' retirement system,  
8 as determined by the board, based on the most recent actuarial valuation of the system.

9 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
10 full-time public service.

11 (c) This employment may not be credited in more than one retirement system under Title 19."  
12

13 **Section 17.** Section 19-7-101, MCA, is amended to read:

14 **"19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in  
15 this chapter:

16 (1) "Compensation" means remuneration paid for services to a member out of funds controlled by  
17 an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

18 (2) "Final average salary" means the average monthly compensation received by a member for any  
19 3 years of continuous service from which contributions were deducted or, in the event that a member has  
20 not served 3 years, the total compensation earned divided by the number of months served. Lump-sum  
21 payments for sick leave and annual leave paid to an employee upon termination of employment may be  
22 used in the calculation of a retirement benefit only to the extent that they are used to replace, on a  
23 month-for-month basis, the normal compensation for a month or months included in the calculation of the  
24 final average salary. A lump-sum payment may not be added to a single month's compensation.

25 (3) "Investigator" means a person who is employed as a criminal investigator or as a gambling  
26 investigator for the department of justice.

27 (4) "Sheriff" means any elected or appointed county sheriff, or undersheriff, or regularly any  
28 appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff. The board shall  
29 adopt rules incorporating both the peace officers standards and training council's current law enforcement  
30 training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs



1 who are eligible for membership in this retirement system."

2  
3 **Section 18.** Section 19-7-612, MCA, is amended to read:

4 **"19-7-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
5 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.  
6 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
7 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall  
8 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
9 elements of the position held by the recipient when the recipient was retired. If the board determines that  
10 the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the  
11 recipient is offered a position under subsection (2). If the recipient refuses to submit to a medical  
12 examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of  
13 the determination of the board.

14 (2) A person other than an elected official whose disability retirement benefit is canceled because  
15 the person is no longer incapacitated must be reinstated to the position held by the person immediately  
16 before the person's retirement or to a position in the same classification within the person's capacity,  
17 whichever is first open. The fact that the person was retired for disability may not prejudice any right to  
18 reinstatement to duty ~~which~~ that the person may have or claim to have.

19 (3) The public body required to reinstate a person under subsection (2) may request a medical or  
20 psychological review as to the ability of the member to return to work as a member of the sheriff's  
21 department. If the board's findings are upheld, the public body shall pay the cost of the review."  
22

23 **SECTION 19. SECTION 19-7-802, MCA, IS AMENDED TO READ:**

24 **"19-7-802. Qualification of other Montana public service.** (1) (a) A member may, at any time  
25 before retirement, make a written election with the board to qualify all or any portion of the member's  
26 service in the public employees', highway patrol officers', firefighters' unified, game wardens', or municipal  
27 police officers' retirement system for which the member either has received or is eligible to receive a refund  
28 of the member's membership contributions. To qualify this service, the member shall contribute to the  
29 pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as  
30 determined by the board, based on the most recent actuarial valuation minus the employer contribution

1 provided in subsection (1)(b). This service may not be credited in more than one retirement system under  
2 Title 19.

3 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
4 the member's former retirement system to the sheriffs' retirement system an amount equal to the employer  
5 contributions made during the member's service but no more than an amount equal to the normal  
6 contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the  
7 most recent actuarial valuation, based on the compensation earned by the employee as a member of the  
8 former system.

9 (2) (a) A member may, at any time before retirement, make a written election with the board to  
10 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
11 The member shall provide compensation and employment documentation certified by the member's public  
12 employer. The board shall grant service credit upon contribution by the employee of the actuarial cost of  
13 granting this service in the sheriffs' retirement system, as determined by the board, based on the most  
14 recent actuarial valuation of the system.

15 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
16 full-time public service.

17 (c) This service may not be credited in more than one retirement system under Title 19."  
18

19 **Section 20.** Section 19-8-712, MCA, is amended to read:

20 **"19-8-712. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
21 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.  
22 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
23 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall  
24 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
25 elements of the position held by the recipient when the recipient retired. If the board determines that the  
26 recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the  
27 recipient is offered a position under subsection (3). If the recipient refuses to submit to a medical  
28 examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of  
29 the determination of the board.

30 (2) If the board determines that a recipient of a disability retirement benefit should no longer be

1 subject to medical review, the board may grant a service retirement status to the recipient without  
2 recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change  
3 in status. If the recipient disagrees with the board's determination, the recipient may request the board to  
4 reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt  
5 of the notice of the status change.

6 (3) A recipient whose disability retirement benefit is canceled because the board has determined  
7 that the recipient is no longer incapacitated must be reinstated to the position held by the recipient  
8 immediately before the recipient's retirement or to a position in the same classification within the recipient's  
9 capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice  
10 any right to reinstatement to duty that the recipient may have or claim to have.

11 (4) The department of fish, wildlife, and parks may request a medical or psychological review as  
12 to the ability of the recipient to return to work as a game warden. If the board's findings are upheld, the  
13 department of fish, wildlife, and parks shall pay the cost of the review."  
14

15 **SECTION 21. SECTION 19-8-902, MCA, IS AMENDED TO READ:**

16 "19-8-902. **Qualification of other Montana public service.** (1) (a) A member may, at any time  
17 before retirement, make a written election with the board to qualify all or any portion of the member's  
18 service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal  
19 police officers' retirement system for which the member either has received or is eligible to receive a refund  
20 of the member's accumulated contributions. To qualify this service, the member shall contribute to the  
21 pension trust fund the actuarial cost of granting the service in the game wardens' retirement system, as  
22 determined by the board, based on the most recent actuarial valuation of the system minus the employer  
23 contribution provided in subsection (1)(b). This service may not be credited in more than one retirement  
24 system under Title 19.

25 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
26 the member's former retirement system to the game wardens' retirement system an amount equal to the  
27 employer contributions made during the member's service but no more than an amount equal to the normal  
28 contribution rate minus the employee contribution rate in the game wardens' retirement system, according  
29 to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the  
30 former system.

1 (2) (a) A member may, at any time before retirement, make a written election with the board to  
2 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
3 The member shall provide salary and employment documentation certified by the member's public employer.  
4 The board shall grant service credit subject to rules adopted by the board upon contribution by the  
5 employee of the actuarial cost of granting this service in the game wardens' retirement system, as  
6 determined by the board, based on the most recent actuarial valuation of the system.

7 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
8 full-time public service.

9 (c) This service may not be credited in more than one retirement system under Title 19."  
10

11 **SECTION 22. SECTION 19-9-405, MCA, IS AMENDED TO READ:**

12 **"19-9-405. Qualification of other Montana public service.** (1) (a) A member may, at any time  
13 before retirement, make a written election with the board to qualify all or any portion of the member's  
14 service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game  
15 wardens' retirement system for which the member either has received or is eligible to receive a refund of  
16 the member's accumulated contributions. To qualify this service, the member shall contribute to the  
17 pension trust fund the actuarial cost of granting the service in the municipal police officers' retirement  
18 system, as determined by the board, based on the most recent actuarial valuation minus the employer  
19 contribution provided in subsection (1)(b). This service may not be credited in more than one retirement  
20 system under Title 19.

21 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
22 the member's former retirement system to the municipal police officers' retirement system an amount equal  
23 to the employer contributions made during the member's service but no more than an amount equal to the  
24 regular contribution rate minus the employee contribution rate in the municipal police officers' retirement  
25 system, according to the most recent actuarial valuation, based on the salaries earned by the employee as  
26 a member of the former system.

27 (2) (a) A member may, at any time before retirement, make a written election with the board to  
28 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
29 The member shall provide salary and employment documentation certified by the member's public employer.  
30 The board shall grant service credit subject to rules adopted by the board upon contribution by the

1 employee of the actuarial cost of granting this service in the municipal police officers' retirement system,  
2 as determined by the board, based on the employee's compensation earned during this period of service  
3 and the regular contribution rate according to the most recent actuarial valuation of the system.

4 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
5 full-time public service.

6 (c) This service may not be credited in more than one retirement system under Title 19."  
7

8 **Section 23.** Section 19-9-904, MCA, is amended to read:

9 **"19-9-904. Termination of benefit.** The board, in its discretion, may require the recipient of a  
10 disability retirement benefit to undergo a medical examination. The examination must be made by a  
11 physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the  
12 board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or  
13 mental capacity, whether the recipient can perform the ~~duties~~ essential elements of the position held by  
14 the recipient when the recipient was retired. If an inactive member is determined by the board to be no  
15 longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive  
16 member is offered a position under 19-9-905. If the inactive member refuses to submit to a medical  
17 examination, the inactive member's disability retirement benefit must cease as of the date of the  
18 determination. The inactive member must be notified of the determination by the board. The board may  
19 review the status of an inactive member at any time."  
20

21 **SECTION 24. SECTION 19-13-404, MCA, IS AMENDED TO READ:**

22 **"19-13-404. Qualification of other Montana public service.** (1) (a) A member may, at any time  
23 before retirement, make a written election with the board to qualify all or any portion of the member's  
24 service credit in the public employees', highway patrol officers', sheriffs', municipal police officers', or  
25 game wardens' retirement system for which the member either has received or is eligible to receive a refund  
26 of the member's accumulated contributions. To qualify this service, the member shall contribute to the  
27 pension trust fund the actuarial cost of granting the service in the firefighters' unified retirement system,  
28 as determined by the board, based on the most recent actuarial valuation minus the employer contribution  
29 provided in subsection (1)(b). This service may not be credited in more than one retirement system under  
30 Title 19.

1 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
 2 the member's former retirement system to the firefighters' unified retirement system an amount equal to  
 3 the employer contributions made during the member's service, but no more than an amount equal to the  
 4 normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system,  
 5 according to the most recent actuarial valuation, based on the compensation earned by the employee as  
 6 a member of the former system.

7 (2) (a) A member may, at any time before retirement, make a written election with the board to  
 8 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
 9 The member shall provide compensation and employment documentation certified by the member's public  
 10 employer. The board shall grant service credit subject to rules adopted by the board upon contribution by  
 11 the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as  
 12 determined by the board, based on the most recent actuarial valuation of the system.

13 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
 14 full-time public service.

15 (c) This service may not be credited in more than one retirement system under Title 19."  
 16

17 **Section 25.** Section 19-13-804, MCA, is amended to read:

18 "19-13-804. **Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
 19 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination  
 20 at the board's expense. The examination must be made by a physician or surgeon at the recipient's place  
 21 of residence or at another place mutually agreed on. Based on the results of the examination, the board  
 22 shall determine whether the recipient has the physical or mental capacity to perform the ~~duties~~ essential  
 23 elements required by the recipient's former position. If the board determines that the recipient is not  
 24 incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability  
 25 retirement benefit must be canceled. The board shall notify the recipient of this determination and the  
 26 cancellation of the recipient's benefit.

27 (2) The cancellation of a disability retirement benefit because a member is no longer incapacitated  
 28 does not prejudice any right of the member to a service retirement benefit."  
 29

30 **SECTION 26. SECTION 19-20-409, MCA, IS AMENDED TO READ:**

1           **"19-20-409. Transfer of service credits and contributions from public employees' retirement**  
 2 **system.** (1) ~~A~~ An active member may at any time before his retirement make a written election with the  
 3 retirement board to qualify in the teachers' retirement system ~~all of his~~ the member's previous creditable  
 4 service in the public employees' retirement system. The amount that must be paid to the retirement system  
 5 to qualify this service under this section is the sum of subsections (2) and (3).

6           (2) ~~The~~ In addition to the amounts directly paid or transferred by the member under subsection (3),  
 7 the public employees' retirement system shall transfer to the teachers' retirement system an amount equal  
 8 to 72% of the amount ~~determined in accordance with subsection (3)~~ payable by the member.

9           (3) ~~The employee member shall pay either directly or by transferring contributions on account with~~  
 10 the public employees' retirement system an amount equal to ~~his~~ the member's accumulated contributions  
 11 at the time ~~he terminated that active membership under 19-2-601 was terminated,~~ plus accrued interest.  
 12 Interest must be calculated from the date of termination until payment is received by the retirement system,  
 13 based on the interest tables in use by the public employees' retirement system.

14           (4) A member who qualifies service from the public employees' retirement system in the teachers'  
 15 retirement system must complete 5 years of membership service in the teachers' retirement system to  
 16 qualify or purchase military service, out-of-state teaching service, employment while on leave, and private  
 17 school employment.

18           (5) The retirement board shall determine the service credits that may be transferred.

19           (6) If a an active member who also has creditable service in the public employees' retirement  
 20 system dies before ~~he qualifies~~ qualifying this service in the teachers' retirement system and if ~~his~~ the  
 21 member's service credits from both systems, when combined, entitle ~~his~~ the member's beneficiary to a  
 22 death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before  
 23 payment of the death benefit, the public employees' retirement board must transfer to the teachers'  
 24 retirement system the contributions necessary to qualify this service in the teachers' retirement system as  
 25 provided in subsections (2) and (3).

26           (7) If the retirement board determines that an individual's membership was erroneously classified  
 27 and reported to the public employees' retirement system, the member's accumulated contributions and  
 28 service must be transferred to the teachers' retirement system and any employee and employer  
 29 contributions due as calculated in 19-20-602 and 19-20-605 are the liability of the employee and the  
 30 employing entity where the error occurred, respectively."

1            NEW SECTION. Section 27. Codification instruction. [Section 2] is intended to be codified as an  
2 integral part of Title 19, chapter 2, part 4, and the provisions of Title 19, chapter 2, part 4, apply to  
3 [section 2].

4

5            NEW SECTION. Section 28. Severability. If a part of [this act] is invalid, all valid parts that are  
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
7 applications, the part remains in effect in all valid applications that are severable from the invalid  
8 applications.

9

10           NEW SECTION. Section 29. Retroactive applicability. (1) [Section ~~13~~ 14] applies retroactively,  
11 within the meaning of 1-2-109, to any service performed by an individual for a county sheriff's department.

12           (2) [Sections 5, 7, ~~9, 11, 12, and 14 through 17~~ 12, 14, 15, 18, 20, 23, AND 25] apply  
13 retroactively, within the meaning of 1-2-109, to initial disability determinations and reviews of ongoing  
14 disability status on and after January 1, 1994.

15

16           NEW SECTION. Section 30. Effective date. [This act] is effective on passage and approval.

17

-END-



## 1 HOUSE BILL NO. 325

2 INTRODUCED BY SIMPKINS

3 BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CERTAIN  
6 RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD;  
7 DESIGNATING JURISDICTION AND VENUE FOR JUDICIAL REVIEW OF FINAL ADMINISTRATIVE  
8 DECISIONS OF THE BOARD; PROHIBITING INDEPENDENT CONTRACTORS FROM BECOMING MEMBERS  
9 OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE CALCULATION OF THE PERS  
10 SURVIVORSHIP BENEFIT; CLARIFYING THE DEFINITION OF DEPUTY SHERIFF FOR PURPOSES OF  
11 DETERMINING ELIGIBILITY FOR MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; ALLOWING THE  
12 BOARD TO USE MAILING LISTS OF PERSONS PARTICIPATING IN THE RETIREMENT SYSTEMS  
13 ADMINISTERED BY THE BOARD FOR PURPOSES OF MAILING MATERIALS ON BEHALF OF THIRD PARTIES  
14 FOR A FEE; AMENDING DISABILITY PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS  
15 ADMINISTERED BY THE BOARD TO CONFORM WITH PROVISIONS OF THE AMERICANS WITH  
16 DISABILITIES ACT; PROVIDING FOR CONVERSION OF THE DISABILITY RETIREMENT OF A MEMBER OF  
17 THOSE SYSTEMS TO A SERVICE RETIREMENT WHEN THE MEMBER REACHES NORMAL RETIREMENT  
18 AGE; CLARIFYING THE TYPES OF INVESTMENTS THAT THE BOARD OF INVESTMENTS IS REQUIRED TO  
19 INVEST IN FOR THE SOCIAL SECURITY AGENCY ACCOUNT; PROVIDING FOR THE DIRECT TRANSFER  
20 OF MEMBERS' CONTRIBUTIONS BETWEEN PUBLIC RETIREMENT SYSTEMS; AMENDING SECTIONS  
21 2-6-109, 19-1-202, 19-1-602, 19-2-303, 19-2-401, 19-2-406, 19-2-704, 19-3-403, 19-3-509, 19-3-511,  
22 19-3-1015, 19-3-1205, 19-5-612, 19-6-612, 19-6-802, 19-7-101, 19-7-612, 19-7-802, 19-8-712,  
23 19-8-902, 19-9-405, 19-9-904, AND 19-13-404, 19-13-804, AND 19-20-409, MCA; AND PROVIDING AN  
24 IMMEDIATE EFFECTIVE DATE AND RETROACTIVE PROVISIONS."

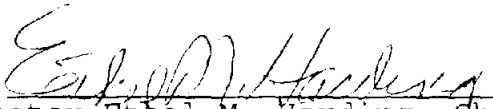
THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 2, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 325 (third reading copy -- blue), respectfully report that HB 325 be amended as follows and as so amended be concurred in.

Signed:   
Senator Ethel M. Harding, Chair

That such amendments read:

1. Title, line 13.

Following: "OF"


Insert: "CERTAIN"

2. Page 4, line 6.

Following: "party"

Insert: "with tax-exempt status under section 501(c)(3) of the Internal Revenue Code, as amended,"

-END-

  
Amd. Coord.  
SA Sec. of Senate

  
Senator Carrying Bill

HB 325  
SENATE  
491116SC.SPV

## 1 HOUSE BILL NO. 325

2 INTRODUCED BY SIMPKINS

3 BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CERTAIN  
6 RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD;  
7 DESIGNATING JURISDICTION AND VENUE FOR JUDICIAL REVIEW OF FINAL ADMINISTRATIVE  
8 DECISIONS OF THE BOARD; PROHIBITING INDEPENDENT CONTRACTORS FROM BECOMING MEMBERS  
9 OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE CALCULATION OF THE PERS  
10 SURVIVORSHIP BENEFIT; CLARIFYING THE DEFINITION OF DEPUTY SHERIFF FOR PURPOSES OF  
11 DETERMINING ELIGIBILITY FOR MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; ALLOWING THE  
12 BOARD TO USE MAILING LISTS OF PERSONS PARTICIPATING IN THE RETIREMENT SYSTEMS  
13 ADMINISTERED BY THE BOARD FOR PURPOSES OF MAILING MATERIALS ON BEHALF OF CERTAIN  
14 THIRD PARTIES FOR A FEE; AMENDING DISABILITY PROVISIONS OF CERTAIN PUBLIC EMPLOYEE  
15 RETIREMENT SYSTEMS ADMINISTERED BY THE BOARD TO CONFORM WITH PROVISIONS OF THE  
16 AMERICANS WITH DISABILITIES ACT; PROVIDING FOR CONVERSION OF THE DISABILITY RETIREMENT  
17 OF A MEMBER OF THOSE SYSTEMS TO A SERVICE RETIREMENT WHEN THE MEMBER REACHES  
18 NORMAL RETIREMENT AGE; CLARIFYING THE TYPES OF INVESTMENTS THAT THE BOARD OF  
19 INVESTMENTS IS REQUIRED TO INVEST IN FOR THE SOCIAL SECURITY AGENCY ACCOUNT; PROVIDING  
20 FOR THE DIRECT TRANSFER OF MEMBERS' CONTRIBUTIONS BETWEEN PUBLIC RETIREMENT SYSTEMS;  
21 AMENDING SECTIONS 2-6-109, 19-1-202, 19-1-602, 19-2-303, 19-2-401, 19-2-406, 19-2-704, 19-3-403,  
22 19-3-509, 19-3-511, 19-3-1015, 19-3-1205, 19-5-612, 19-6-612, 19-6-802, 19-7-101, 19-7-612,  
23 19-7-802, 19-8-712, 19-8-902, 19-9-405, 19-9-904, AND 19-13-404, 19-13-804, AND 19-20-409, MCA;  
24 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE PROVISIONS."

25  
26 STATEMENT OF INTENT

27 A statement of intent is required for this bill because 19-7-101 gives the public employees'  
28 retirement board authority to adopt rules that clarify the training and salary requirements for persons to be  
29 eligible for membership in the sheriffs' retirement system because of their appointment as deputy sheriffs.

30 It is the intent of the legislature that only full-time, professional law enforcement officers be eligible

1 for membership in the sheriffs' retirement system. Because persons without the requisite training and  
2 salary required to be paid to deputy sheriffs have been erroneously reported to the sheriffs' retirement  
3 system in the past, it is the intent of this bill to require the board to adopt rules that will reflect up-to-date  
4 training and salary requirements for appointed deputy sheriffs acting in a professional law enforcement  
5 capacity.

6 The legislature intends that persons employed in the following positions and who are not  
7 permanent, full-time law enforcement officers employed by county sheriffs not be eligible for membership  
8 in this retirement system: jailers; communications officers; other administrative, clerical, or support  
9 personnel; and other persons deputized to act as reserve deputies.

10 A statement of intent is further required for this bill because [section 2] gives the board authority  
11 to adopt rules to implement the provisions of the bill.

12 It is the intent of the legislature to provide the board with the option of generating fees from the  
13 sale of the use of mailing lists composed of participants in the retirement systems administered by the  
14 board. However, the legislature intends that such use be restricted by the board so that retirement system  
15 participants are neither deprived of their right of privacy concerning confidential information nor inundated  
16 with excessive mailings, particularly as concerns commercial interests, individual political candidates and  
17 ballot issues, or other specific political issues.

18 The legislature intends to allow the board discretion in promulgating rules concerning procedures  
19 to effectuate this intent. The legislature intends that the board have discretion to determine, for example,  
20 that mailings may not be allowed at all under this provision, that mailings may be tried for a limited period  
21 of time only, that mailings may be limited to tax-exempt organizations under section 501(c)(3) of the  
22 Internal Revenue Code, that specific types of mailings may be allowed, that mailings can be limited to  
23 specific categories of participants, or that participants have a right to be excluded from mailings on request.

24 The legislature intends that the fees generated by mailings for third parties not reduce the amount  
25 of appropriation otherwise allocated for the administration of the retirement system but be used as the  
26 board considers appropriate, such as for additional communication by the board with retirement system  
27 participants regarding retirement system rights, obligations, and similar issues.

28 A statement of intent is further required for this bill because general rulemaking authority is granted  
29 to the board to establish rules requiring employers to provide information germane to processing an  
30 application for disability retirement of a public employee retirement system member.

1           The Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq., requires employers  
2 to define the essential elements of each position and to make reasonable accommodations for employees  
3 with disabilities.

4           In recognition of the purpose of the ADA, it is intended that the board, when determining if an  
5 applicant is totally and permanently disabled and thereby eligible for benefits from one of the retirement  
6 systems administered by it, consider whether the member is able to perform the essential elements of the  
7 position after the employer makes accommodations required by the ADA.

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11           **Section 1.** Section 2-6-109, MCA, is amended to read:

12           **"2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except  
13 as provided in subsections (3) through ~~(7)~~ (8), in order to protect the privacy of those who deal with state  
14 and local government:

15           (a) ~~no~~ an agency may not distribute or sell for use as a mailing list any list of persons without first  
16 securing the permission of those on the list; and

17           (b) ~~no~~ a list of persons prepared by the agency may not be used as a mailing list except by the  
18 agency or another agency without first securing the permission of those on the list.

19           (2) As used in this section, "agency" means any board, bureau, commission, department, division,  
20 authority, or officer of the state or a local government.

21           (3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a  
22 mailing list by examination of original documents or applications ~~which~~ that are otherwise open to public  
23 inspection.

24           (4) This section does not apply to the lists of registered electors and the new voter lists provided  
25 for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or  
26 to lists of persons holding driver's licenses provided for under 61-5-126.

27           (5) This section ~~shall~~ does not prevent an agency from providing a list to persons providing  
28 prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted  
29 ~~therefrom~~ from that chapter as provided in 20-30-102.

30           (6) This section does not apply to the right of access either by Montana law enforcement agencies

1 or, by purchase or otherwise, of public records dealing with motor vehicle registration.

2 (7) This section does not apply to a corporate information list developed by the secretary of state  
3 containing the name, address, registered agent, officers, and directors of business, nonprofit, religious,  
4 professional, and close corporations authorized to do business in this state.

5 (8) This section does not apply to the use by the public employees' retirement board of a mailing  
6 list of board-administered retirement system participants to send materials on behalf of a third party WITH  
7 TAX-EXEMPT STATUS UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE, AS AMENDED,  
8 for a fee determined by rules of the board, provided that the mailing list is not released to the third party.

9 ~~(8)(9)~~ A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."  
10

11 **NEW SECTION. Section 2. Third-party mailings by board to system participants -- rules.** (1) The  
12 board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are  
13 implemented, the board shall adopt rules governing means of implementation, including the specification  
14 of eligible third parties, appropriate materials, and applicable fees and procedures.

15 (2) Fees generated by third-party mailings must be deposited in an account in the state special  
16 revenue fund and must be appropriated to the board for the benefit of participants of retirement systems  
17 administered by the board.  
18

19 **Section 3.** Section 19-1-202, MCA, is amended to read:

20 **"19-1-202. Costs of administration.** All costs allocable to the administration of this chapter shall  
21 must be charged to the retirement division pension trust fund of the public employees' retirement system.  
22 ~~So much of the~~ The amount of administrative costs as are not defrayed by interest and income earned upon  
23 the contribution account, which ~~has had~~ been credited to the retirement division pension trust fund, of the  
24 public employees' retirement system, as provided in 19-1-602, prior to July 1, 1987, ~~shall~~ must be paid  
25 to the state agency for deposit to the retirement division pension trust fund of the public employees'  
26 retirement system by each department of the state and by the participating divisions, instrumentalities, and  
27 political subdivisions of the state pro rata according to their respective contributions."  
28

29 **Section 4.** Section 19-1-602, MCA, is amended to read:

30 **"19-1-602. Management of account.** (1) All ~~moneys~~ money in the account ~~shall~~ must be mingled

1 and undivided.

2 (2) Subject to the provisions of this chapter, the state agency ~~is vested with~~ has full power,  
3 authority, and jurisdiction over the account, including all ~~moneys~~ money and property or securities  
4 belonging ~~thereto~~ to the account. It may perform any ~~and all~~ acts, whether or not specifically designated,  
5 ~~which that~~ that are necessary to the administration of the account and that are consistent with the provisions  
6 of this chapter.

7 (3) The board of investments shall invest the account ~~in investments of the same character as are~~  
8 ~~permitted by 17-6-211 for the investment of moneys in the long term investment fund~~ as part of the unified  
9 investment program described in Title 17, chapter 6, part 2. The state agency shall credit all interest and  
10 income earned on the account in excess of that which, in its judgment, may be needed for the purposes  
11 set forth in 19-1-603 to the state general fund.

12 (4) ~~No later than June 30, 1986~~ By the end of the fiscal year during which all payments determined  
13 to be due and payable from the state to the social security administration have been paid, the state agency  
14 shall ~~calculate an amount equal to the earned income from current and previous fiscal years in the~~  
15 ~~contribution account, less all payments and credits due or owing, and transfer this amount~~ any funds  
16 remaining in the contribution account to the state general fund."  
17

18 **Section 5.** Section 19-2-303, MCA, is amended to read:

19 "**19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems  
20 subject to this chapter, the following definitions apply:

21 (1) "Accumulated contributions" means the sum of all the regular and any additional contributions  
22 made by a member in a system, together with the regular interest on the contributions.

23 (2) "Active member" means a member who is an employee of an employer and who is making the  
24 required contributions to the system based on the member's compensation paid by the employer.

25 (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory  
26 manner to represent the present value of the benefits to be derived from the additional service to be  
27 credited based on the most recent actuarial valuation for the system and the age, years until retirement,  
28 and current salary of the member.

29 (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the  
30 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded

1 annually.

2 (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a  
3 retirement system over the present value of future normal costs in that retirement system.

4 (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

5 (7) "Additional contributions" means contributions made by a member to purchase various types  
6 of optional service credit as allowed by the applicable retirement system.

7 (8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a  
8 lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and  
9 are not subject to periodic or one-time increases.

10 (9) "Benefit" means the service or disability retirement or survivorship benefit provided by a  
11 retirement system.

12 (10) "Board" means the public employees' retirement board provided for in 2-15-1009.

13 (11) "Contingent annuitant" means a person designated to receive a continuing annuity after the  
14 death of a retired member.

15 (12) "Credited service" or "service credit" means the periods of time for which the required  
16 contributions have been made to a retirement system and that are used to calculate service or disability  
17 retirement or survivorship benefits under a retirement system.

18 (13) "Department" means the department of administration.

19 (14) "Designated beneficiary" means the person designated by a member to receive any  
20 survivorship benefits or lump-sum payments upon the death of the member, including annuities derived  
21 from the benefits or payments.

22 (15) "Disability" means a total inability of the member to perform the member's duties by reason  
23 of physical or mental incapacity. The disability must be incurred while the member is an active member  
24 and must be one of permanent duration or of extended and uncertain duration, as determined by the board  
25 on the basis of competent medical opinion.

26 (16) "Division" means the public employees' retirement division of the department of administration.

27 (17) "Employee" means a person who is employed by an employer in any capacity and whose salary  
28 is paid by the employer.

29 (18) "Employer" means a governmental entity participating in a retirement system enumerated in  
30 19-2-302 on behalf of its eligible employees.



1            (19) "Essential elements of the position" means fundamental job duties. An element may be  
 2 considered essential because of but not limited to the following factors:

3            (a) the position exists to perform the element;

4            (b) there are a limited number of employees to perform the element; or

5            (c) the element is highly specialized.

6            ~~(19)~~(20) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

7            ~~(20)~~(21) "Inactive member" means a member who has terminated service with an employer and has  
 8 not withdrawn the member's accumulated contributions from the retirement system.

9            ~~(21)~~(22) "Member" means any person with accumulated contributions and service credited with a  
 10 retirement system or receiving a retirement benefit on account of the person's previous service credited  
 11 in a retirement system.

12            ~~(22)~~(23) "Membership service" or "years of service" means the periods of service that are used to  
 13 determine eligibility for retirement or other benefits.

14            ~~(23)~~(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost  
 15 method required to fund accruing benefits for members of a retirement system during any year in the future.  
 16 Normal cost does not include any portion of the supplemental costs of a retirement system.

17            ~~(24)~~(25) "Pension" means payments for life derived from contributions to a system made from state-  
 18 or employer-controlled funds.

19            ~~(25)~~(26) "Pension trust fund" means a fund established to hold the contributions, income, and  
 20 assets of a retirement system in public trust.

21            ~~(26)~~(27) "Regular contributions" means contributions required from members under a retirement  
 22 system.

23            ~~(27)~~(28) "Regular interest" means interest at the rate set from time to time by the board.

24            ~~(28)~~(29) "Retirement" or "retired" means the status of a member who has terminated from service  
 25 with a retirement benefit under a retirement system.

26            ~~(29)~~(30) "Retirement benefit" means the periodic benefit payable following service, early, or  
 27 disability retirement under a retirement system.

28            ~~(30)~~(31) "Retirement system" means one of the public employee retirement systems enumerated  
 29 in 19-2-302.

30            ~~(31)~~(32) "Service" means employment of an employee in a position covered by a retirement system.

1           ~~(32)~~(33) "Supplemental cost" means an element of the total actuarial cost of a retirement system  
 2 arising from benefits payable for service performed prior to the inception of the retirement system or prior  
 3 to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to  
 4 fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are  
 5 included in the unfunded actuarial liabilities of the retirement system.

6           ~~(33)~~(34) "Survivorship benefit" means payments for life to the beneficiary of a deceased member  
 7 who died while in service under a retirement system.

8           ~~(34)~~(35) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement  
 9 system's actuarial liabilities at any given point in time over the value of its cash and investments on that  
 10 same date.

11           ~~(35)~~(36) "Vested member" or "vested" means a member or the status of a member who has  
 12 attained the minimum membership service requirements to be eligible for retirement benefits under a  
 13 retirement system.

14           ~~(36)~~(37) "Written application" means a written instrument duly executed and filed with the board  
 15 and containing all information required by the board, including such proofs of age as the board considers  
 16 necessary."  
 17

18           **Section 6.** Section 19-2-401, MCA, is amended to read:

19           "**19-2-401. Location of board -- jurisdiction and venue for judicial review -- quorum -- officers and**  
 20 **employees.** (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial  
 21 review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County,  
 22 unless otherwise stipulated by the parties.

23           (2) A quorum of the board is three members.

24           (3) The board shall elect one of its members presiding officer. The board may appoint a committee  
 25 of one or more of its members to perform routine acts, such as retirement of members and fixing of  
 26 retirement benefits, approval of death claims, and correction of records necessary in the administration of  
 27 the systems in accordance with the provisions of chapters 3, 5 through 9, 12, 13, and 15 of this title and  
 28 in accordance with the rules of the board. The attorney general is the legal counsel for the board."  
 29

30           **Section 7.** Section 19-2-406, MCA, is amended to read:

1           **"19-2-406. Determination of disability by board -- compliance with federal law -- conversion to**  
 2 **service retirement benefit -- rules.** (1) The board shall determine whether a member has become disabled.  
 3 In the discharge of its duty regarding determinations, the board, any member of the board, or any  
 4 authorized representative of the board may order medical examinations, conduct hearings, administer oaths  
 5 and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance  
 6 of witnesses and the production of books, papers, correspondence, memoranda, and other records  
 7 considered necessary as evidence in connection with a claim for disability retirement.

8           (2) The board shall adopt rules requiring employers to identify and explain the essential elements  
 9 of a member's position, any accommodations that were or can be made in compliance with the Americans  
 10 With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

11           ~~(2)(3)~~ (3) The board shall retain medical personnel to advise it in assessing the nature and extent of  
 12 disabling conditions while reviewing claims for disability retirement.

13           (4) The disability retirement benefit paid to a member must be converted to a service retirement  
 14 benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum  
 15 age required for normal service retirement. The board shall notify the member in writing as to the change  
 16 in status."

17  
 18           **SECTION 8. SECTION 19-2-704, MCA, IS AMENDED TO READ:**

19           **"19-2-704. Purchasing service credits allowed.** (1) Subject to the rules promulgated by the board,  
 20 an eligible member may elect to contribute amounts in addition to the mandatory employee contributions  
 21 required by the retirement system in which the member participates for the purpose of purchasing service  
 22 credits as provided by the statutes governing the retirement system.

23           (2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802,  
 24 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all  
 25 or a portion of the member's accumulated contributions on deposit in a pension trust fund from which  
 26 service is being transferred to the pension trust fund of another plan in which service is being credited.  
 27 The transfer of contributions may include both taxed contributions and tax-deferred contributions and  
 28 interest. However, if less than all of the accumulated contributions on deposit in a pension trust fund is  
 29 being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis,  
 30 with the remainder refunded to the member. The transferring agency shall identify at the time of the

1 transfer the taxed and tax-deferred amounts being transferred."

2

3 **Section 9.** Section 19-3-403, MCA, is amended to read:

4 **"19-3-403. Exclusions from membership.** The following persons may not become members of the  
5 retirement system:

6 (1) inmates of state institutions;

7 (2) persons in state institutions principally for the purpose of training, but who receive  
8 compensation;

9 (3) independent contractors, ~~unless there is a written contract that specifies the creation of an~~  
10 ~~employer-employee relationship for purposes of retirement coverage under the retirement system;~~

11 (4) persons who are members of any other retirement or pension system supported wholly or in  
12 part by funds of the United States government, any state government, or political subdivision of the state  
13 and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent  
14 a person from receiving credit for the same service in two retirement systems supported wholly or in part  
15 by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503.  
16 A member of the retirement system who, because of employment by the state, is required to become a  
17 member of any other system described in this subsection is considered, solely for the purposes of making  
18 regular contributions, as permanently separated from service. Exclusion under this subsection is subject  
19 to the following exceptions:

20 (a) When an employer has entered into a collective bargaining agreement that includes provisions  
21 for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by  
22 the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for  
23 membership in the retirement system.

24 (b) For the purpose of this subsection (4), persons receiving pensions, retirement allowances, or  
25 other payments from any source on account of employment other than as an employee are not considered,  
26 because of receipt, members of any other retirement or pension system.

27 (5) court commissioners, elected officials, or appointive members of any board or commission who  
28 serve the state or any contracting employer intermittently and who are paid on a per diem basis;

29 (6) full-time students employed at and attending the same public elementary school, high school,  
30 ~~vocational-technical-center~~ school of technology, or community college or any unit of the state university

1 system, except that a person excluded from membership as a student of a public community college or a  
2 unit of the state university system who later becomes a member by otherwise becoming an employee may  
3 affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the  
4 board in writing after becoming a member and become eligible to receive credited service for the excluded  
5 service under the provisions of 19-3-505."

6  
7 **SECTION 10. SECTION 19-3-509, MCA, IS AMENDED TO READ:**

8 **"19-3-509. Qualification of other Montana public service.** (1) (a) A member may, at any time  
9 before retirement, make a written election with the board to qualify as service in this retirement system all  
10 or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens',  
11 firefighters' unified, or municipal police officers' retirement system for which the member either has  
12 received or is eligible to receive a refund of membership contributions. To qualify this service, the member  
13 shall contribute to the pension trust fund the actuarial cost of granting the service in the public employees'  
14 retirement system, as determined by the board, based on the most recent actuarial valuation minus the  
15 employer contribution provided in subsection (1)(b). This service may not be credited in more than one  
16 retirement system under Title 19.

17 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
18 the member's former retirement system to the public employees' retirement system an amount equal to the  
19 employer contributions made during the member's service but no more than an amount equal to the normal  
20 cost contribution rate minus the employee contribution rate in the public employees' retirement system,  
21 according to the most recent actuarial valuation, based on the salaries earned by the employee as a member  
22 of the former system.

23 (2) (a) A member may, at any time before retirement, make a written election with the board to  
24 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
25 The member shall provide salary and employment documentation certified by the member's former public  
26 employer. The board may grant service credit upon contribution by the employee of the actuarial cost of  
27 granting this service in the public employees' retirement system, as determined by the board, based on the  
28 most recent actuarial valuation of the system.

29 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
30 full-time public service.

1 (c) This service may not be credited in more than one retirement system under Title 19."

2  
3 **SECTION 11. SECTION 19-3-511, MCA, IS AMENDED TO READ:**

4 **"19-3-511. Transfer of service credits and contributions from teachers' retirement system. (1)**

5 A An active member may at any time before retirement make a written election with the board to qualify  
6 in the public employees' retirement system all of the member's service in the teachers' retirement system  
7 for which the member either has received or is eligible to receive a refund. The amount that must be paid  
8 or transferred to the retirement system to qualify this service under this section is the sum of subsections  
9 (2) and (3).

10 (2) ~~The~~ In addition to the amounts directly paid or transferred by the member under subsection (3),  
11 the teachers' retirement system shall transfer to the public employees' retirement system an amount equal  
12 to 72% of the amount determined in accordance with subsection (3) payable by the member.

13 (3) The ~~employee member~~ shall pay either directly or by transferring contributions on account with  
14 the teachers' retirement system an amount equal to the ~~employee's member's~~ member's accumulated contributions  
15 at the time ~~the employee terminated~~ that active membership was terminated with the teachers' retirement  
16 system, ~~as defined in 19-20-302,~~ plus accrued interest. Interest must be calculated from the date of  
17 termination until payment is received by the public employees' retirement system, based on the interest  
18 tables in use by the teachers' retirement system.

19 (4) The amount of service credit granted in subsection (1) must be on a month-by-month basis.  
20 Military service credit transferred from the teachers' retirement system must be included in the 5-year  
21 maximum military service credit provided for in 19-3-503.

22 (5) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount  
23 of service credit qualified under this section and the amount paid to the retirement system under  
24 subsections (2) and (3).

25 (6) If a an active member who also has service credit in the teachers' retirement system dies before  
26 the member qualifies this service in the public employees' retirement system and if the service credits from  
27 both systems, when combined, entitle the member's designated beneficiary to a survivorship benefit, the  
28 payment of the survivorship benefit is the liability of the public employees' retirement system. Before  
29 payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees'  
30 retirement system the contributions necessary to qualify this service in the public employees' retirement

1 system as provided in subsections (2) and (3)."

2

3 **Section 12.** Section 19-3-1015, MCA, is amended to read:

4 **"19-3-1015. Medical examination of disability retiree -- cancellation and reinstatement.** (1) The  
5 board may, in its discretion, require a disabled member to undergo a medical examination. The examination  
6 must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the  
7 retired member and the board. Upon the basis of the examination, the board shall determine whether the  
8 disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements  
9 of either the duties of the position held by the member when the member retired or the duties position  
10 proposed to be assigned to the member. If the board determines the member is not incapacitated or if the  
11 member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

12 (2) If the board determines that a disabled member should no longer be subject to medical review,  
13 the board may grant service retirement status to the member without recalculating the monthly benefit.  
14 The board shall notify the member in writing as to the change in status. If the disabled member disagrees  
15 with the board's determination, the member may request the board to reconsider its action. The request  
16 for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

17 (3) A member whose disability retirement benefit is canceled because the board has determined  
18 that the member is no longer incapacitated must be reinstated to the position held by the member  
19 immediately before the member's retirement or to a position in the same classification with duties within  
20 the member's capacity if the member was an employee of the state or of the university. If the member was  
21 an employee of a contracting employer, the board shall notify the proper official of the contracting employer  
22 that the disability retirement benefit has been canceled and that the former employee is eligible for  
23 reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any  
24 right to reinstatement to duty that the former employee may have or claim to have.

25 (4) If a member whose disability retirement benefit is canceled is not reemployed in a position  
26 subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to  
27 have been discontinued coincident with the commencement of the member's retirement benefit."

28

29 **Section 13.** Section 19-3-1205, MCA, is amended to read:

30 **"19-3-1205. Amount of survivorship benefit.** The survivorship benefit payable to a member's

1 designated beneficiary is the actuarial equivalent of either:

2 (1) the accrued portion of the ~~service~~ early retirement benefit that would have been payable to the  
3 member commencing at age ~~60~~ 50 pursuant to ~~19-3-904~~ 19-3-906, if the member had not attained age  
4 ~~60~~ 50 or earned 25 years of service credit at the time of death; or

5 (2) if the deceased member had attained age 50 or earned 25 years of service credit at the time  
6 of death, the early retirement benefit that would have been payable to the member if the member had  
7 retired immediately prior to death; or

8 ~~(2)(3)~~ if the deceased member had attained age 60 or earned 30 years of service credit at the time  
9 of death, the service retirement benefit that would have been payable to the member if the member had  
10 retired immediately prior to death."

11

12 **Section 14.** Section 19-5-612, MCA, is amended to read:

13 "19-5-612. **Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
14 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.  
15 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
16 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall  
17 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
18 elements of the position held by the recipient when the recipient was retired. If the board determines that  
19 the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the  
20 recipient's disability retirement benefit must be canceled.

21 (2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated  
22 may not prejudice any right of the recipient to a retirement benefit other than a disability retirement  
23 benefit."

24

25 **Section 15.** Section 19-6-612, MCA, is amended to read:

26 "19-6-612. **Medical examination of disability retiree -- cancellation of benefit.** (1) The board may  
27 require the recipient of a disability retirement benefit to undergo a medical examination. The examination  
28 must be made by a physician or surgeon at the recipient's place of residence or at another place mutually  
29 agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether  
30 the recipient can perform the ~~duties~~ essential elements of the position held by the recipient when the



1 recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability  
 2 retirement benefit must be canceled when the recipient is offered a position under subsection (3). If the  
 3 recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be  
 4 canceled.

5 (2) If the board determines that a recipient of a disability retirement benefit should no longer be  
 6 subject to medical review, the board may grant a service retirement status to the recipient without  
 7 recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change  
 8 in status. If the recipient disagrees with the board's determination, the recipient may request the board to  
 9 reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt  
 10 of the notice of the status change.

11 (3) A recipient whose disability retirement benefit is canceled because the board has determined  
 12 that the recipient is no longer incapacitated must be reinstated to the position held by the recipient  
 13 immediately before the recipient's retirement or to a position in the same classification within the recipient's  
 14 capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice  
 15 any right to reinstatement to duty that the recipient may have or claim to have.

16 (4) The department of justice may request a medical or psychological review as to the ability of  
 17 the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the  
 18 department of justice shall pay the cost of the review."

19

20 **SECTION 16. SECTION 19-6-802, MCA, IS AMENDED TO READ:**

21 "19-6-802. **Qualification of other Montana public service.** (1) (a) A member may, at any time  
 22 before retirement, make a written election with the board to qualify all or any portion of the member's  
 23 service in the public employees', sheriffs', game wardens', firefighters' unified, or municipal police officers'  
 24 retirement system for which the member either has received or is eligible to receive a refund of the  
 25 member's membership contributions. To qualify this service, the member shall contribute to the pension  
 26 trust fund the actuarial cost of granting the service credit in the highway patrol officers' retirement system,  
 27 as determined by the board, based on the most recent actuarial valuation minus the employer contribution  
 28 provided in subsection (1)(b). This service may not be credited in more than one retirement system under  
 29 Title 19.

30 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from

1 the member's former retirement system to the highway patrol officers' retirement system an amount equal  
2 to the employer contributions made during the member's service but no more than an amount equal to the  
3 normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement  
4 system, according to the most recent actuarial valuation.

5 (2) (a) A member may, at any time before retirement, make a written election with the board to  
6 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
7 The member shall provide compensation and employment documentation certified by the member's public  
8 employer. The board shall grant service credit subject to rules adopted by the board upon contribution by  
9 the employee of the actuarial cost of granting this service in the highway patrol officers' retirement system,  
10 as determined by the board, based on the most recent actuarial valuation of the system.

11 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
12 full-time public service.

13 (c) This employment may not be credited in more than one retirement system under Title 19."  
14

15 **Section 17.** Section 19-7-101, MCA, is amended to read:

16 "19-7-101. **Definitions.** Unless the context requires otherwise, the following definitions apply in  
17 this chapter:

18 (1) "Compensation" means remuneration paid for services to a member out of funds controlled by  
19 an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

20 (2) "Final average salary" means the average monthly compensation received by a member for any  
21 3 years of continuous service from which contributions were deducted or, in the event that a member has  
22 not served 3 years, the total compensation earned divided by the number of months served. Lump-sum  
23 payments for sick leave and annual leave paid to an employee upon termination of employment may be  
24 used in the calculation of a retirement benefit only to the extent that they are used to replace, on a  
25 month-for-month basis, the normal compensation for a month or months included in the calculation of the  
26 final average salary. A lump-sum payment may not be added to a single month's compensation.

27 (3) "Investigator" means a person who is employed as a criminal investigator or as a gambling  
28 investigator for the department of justice.

29 (4) "Sheriff" means any elected or appointed county sheriff, or undersheriff, or ~~regularly~~ any  
30 appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff. The board shall

1 adopt rules incorporating both the peace officers standards and training council's current law enforcement  
2 training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs  
3 who are eligible for membership in this retirement system."

4  
5 **Section 18.** Section 19-7-612, MCA, is amended to read:

6 **"19-7-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
7 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.  
8 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
9 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall  
10 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
11 elements of the position held by the recipient when the recipient was retired. If the board determines that  
12 the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the  
13 recipient is offered a position under subsection (2). If the recipient refuses to submit to a medical  
14 examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of  
15 the determination of the board.

16 (2) A person other than an elected official whose disability retirement benefit is canceled because  
17 the person is no longer incapacitated must be reinstated to the position held by the person immediately  
18 before the person's retirement or to a position in the same classification within the person's capacity,  
19 whichever is first open. The fact that the person was retired for disability may not prejudice any right to  
20 reinstatement to duty ~~which~~ that the person may have or claim to have.

21 (3) The public body required to reinstate a person under subsection (2) may request a medical or  
22 psychological review as to the ability of the member to return to work as a member of the sheriff's  
23 department. If the board's findings are upheld, the public body shall pay the cost of the review."

24  
25 **SECTION 19. SECTION 19-7-802, MCA, IS AMENDED TO READ:**

26 **"19-7-802. Qualification of other Montana public service.** (1) (a) A member may, at any time  
27 before retirement, make a written election with the board to qualify all or any portion of the member's  
28 service in the public employees', highway patrol officers', firefighters' unified, game wardens', or municipal  
29 police officers' retirement system for which the member either has received or is eligible to receive a refund  
30 of the member's membership contributions. To qualify this service, the member shall contribute to the

1 pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as  
2 determined by the board, based on the most recent actuarial valuation minus the employer contribution  
3 provided in subsection (1)(b). This service may not be credited in more than one retirement system under  
4 Title 19.

5 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
6 the member's former retirement system to the sheriffs' retirement system an amount equal to the employer  
7 contributions made during the member's service but no more than an amount equal to the normal  
8 contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the  
9 most recent actuarial valuation, based on the compensation earned by the employee as a member of the  
10 former system.

11 (2) (a) A member may, at any time before retirement, make a written election with the board to  
12 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
13 The member shall provide compensation and employment documentation certified by the member's public  
14 employer. The board shall grant service credit upon contribution by the employee of the actuarial cost of  
15 granting this service in the sheriffs' retirement system, as determined by the board, based on the most  
16 recent actuarial valuation of the system.

17 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
18 full-time public service.

19 (c) This service may not be credited in more than one retirement system under Title 19."  
20

21 **Section 20.** Section 19-8-712, MCA, is amended to read:

22 **"19-8-712. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
23 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination.  
24 The examination must be made by a physician or surgeon at the recipient's place of residence or at another  
25 place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall  
26 determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ essential  
27 elements of the position held by the recipient when the recipient retired. If the board determines that the  
28 recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the  
29 recipient is offered a position under subsection (3). If the recipient refuses to submit to a medical  
30 examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of

1 the determination of the board.

2 (2) If the board determines that a recipient of a disability retirement benefit should no longer be  
3 subject to medical review, the board may grant a service retirement status to the recipient without  
4 recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change  
5 in status. If the recipient disagrees with the board's determination, the recipient may request the board to  
6 reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt  
7 of the notice of the status change.

8 (3) A recipient whose disability retirement benefit is canceled because the board has determined  
9 that the recipient is no longer incapacitated must be reinstated to the position held by the recipient  
10 immediately before the recipient's retirement or to a position in the same classification within the recipient's  
11 capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice  
12 any right to reinstatement to duty that the recipient may have or claim to have.

13 (4) The department of fish, wildlife, and parks may request a medical or psychological review as  
14 to the ability of the recipient to return to work as a game warden. If the board's findings are upheld, the  
15 department of fish, wildlife, and parks shall pay the cost of the review."  
16

17 **SECTION 21. SECTION 19-8-902, MCA, IS AMENDED TO READ:**

18 "19-8-902. **Qualification of other Montana public service.** (1) (a) A member may, at any time  
19 before retirement, make a written election with the board to qualify all or any portion of the member's  
20 service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal  
21 police officers' retirement system for which the member either has received or is eligible to receive a refund  
22 of the member's accumulated contributions. To qualify this service, the member shall contribute to the  
23 pension trust fund the actuarial cost of granting the service in the game wardens' retirement system, as  
24 determined by the board, based on the most recent actuarial valuation of the system minus the employer  
25 contribution provided in subsection (1)(b). This service may not be credited in more than one retirement  
26 system under Title 19.

27 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
28 the member's former retirement system to the game wardens' retirement system an amount equal to the  
29 employer contributions made during the member's service but no more than an amount equal to the normal  
30 contribution rate minus the employee contribution rate in the game wardens' retirement system, according

1 to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the  
2 former system.

3 (2) (a) A member may, at any time before retirement, make a written election with the board to  
4 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
5 The member shall provide salary and employment documentation certified by the member's public employer.  
6 The board shall grant service credit subject to rules adopted by the board upon contribution by the  
7 employee of the actuarial cost of granting this service in the game wardens' retirement system, as  
8 determined by the board, based on the most recent actuarial valuation of the system.

9 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
10 full-time public service.

11 (c) This service may not be credited in more than one retirement system under Title 19."

12  
13 **SECTION 22. SECTION 19-9-405, MCA, IS AMENDED TO READ:**

14 **"19-9-405. Qualification of other Montana public service.** (1) (a) A member may, at any time  
15 before retirement, make a written election with the board to qualify all or any portion of the member's  
16 service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game  
17 wardens' retirement system for which the member either has received or is eligible to receive a refund of  
18 the member's accumulated contributions. To qualify this service, the member shall contribute to the  
19 pension trust fund the actuarial cost of granting the service in the municipal police officers' retirement  
20 system, as determined by the board, based on the most recent actuarial valuation minus the employer  
21 contribution provided in subsection (1)(b). This service may not be credited in more than one retirement  
22 system under Title 19.

23 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
24 the member's former retirement system to the municipal police officers' retirement system an amount equal  
25 to the employer contributions made during the member's service but no more than an amount equal to the  
26 regular contribution rate minus the employee contribution rate in the municipal police officers' retirement  
27 system, according to the most recent actuarial valuation, based on the salaries earned by the employee as  
28 a member of the former system.

29 (2) (a) A member may, at any time before retirement, make a written election with the board to  
30 qualify any full-time public service employment performed for the state or a political subdivision of the state.

1 The member shall provide salary and employment documentation certified by the member’s public employer.  
 2 The board shall grant service credit subject to rules adopted by the board upon contribution by the  
 3 employee of the actuarial cost of granting this service in the municipal police officers’ retirement system,  
 4 as determined by the board, based on the employee’s compensation earned during this period of service  
 5 and the regular contribution rate according to the most recent actuarial valuation of the system.

6 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
 7 full-time public service.

8 (c) This service may not be credited in more than one retirement system under Title 19."  
 9

10 **Section 23.** Section 19-9-904, MCA, is amended to read:

11 **"19-9-904. Termination of benefit.** The board, in its discretion, may require the recipient of a  
 12 disability retirement benefit to undergo a medical examination. The examination must be made by a  
 13 physician or surgeon at the recipient’s place of residence or at another place mutually agreed on, at the  
 14 board’s expense. Upon the basis of the examination, the board shall determine, by reason of physical or  
 15 mental capacity, whether the recipient can perform the ~~duties~~ essential elements of the position held by  
 16 the recipient when the recipient was retired. If an inactive member is determined by the board to be no  
 17 longer disabled, the inactive member’s disability retirement benefit must be canceled when the inactive  
 18 member is offered a position under 19-9-905. If the inactive member refuses to submit to a medical  
 19 examination, the inactive member’s disability retirement benefit must cease as of the date of the  
 20 determination. The inactive member must be notified of the determination by the board. The board may  
 21 review the status of an inactive member at any time."  
 22

23 **SECTION 24. SECTION 19-13-404, MCA, IS AMENDED TO READ:**

24 **"19-13-404. Qualification of other Montana public service.** (1) (a) A member may, at any time  
 25 before retirement, make a written election with the board to qualify all or any portion of the member’s  
 26 service credit in the public employees’, highway patrol officers’, sheriffs’, municipal police officers’, or  
 27 game wardens’ retirement system for which the member either has received or is eligible to receive a refund  
 28 of the member’s accumulated contributions. To qualify this service, the member shall contribute to the  
 29 pension trust fund the actuarial cost of granting the service in the firefighters’ unified retirement system,  
 30 as determined by the board, based on the most recent actuarial valuation minus the employer contribution

1 provided in subsection (1)(b). This service may not be credited in more than one retirement system under  
2 Title 19.

3 (b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from  
4 the member's former retirement system to the firefighters' unified retirement system an amount equal to  
5 the employer contributions made during the member's service, but no more than an amount equal to the  
6 normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system,  
7 according to the most recent actuarial valuation, based on the compensation earned by the employee as  
8 a member of the former system.

9 (2) (a) A member may, at any time before retirement, make a written election with the board to  
10 qualify any full-time public service employment performed for the state or a political subdivision of the state.  
11 The member shall provide compensation and employment documentation certified by the member's public  
12 employer. The board shall grant service credit subject to rules adopted by the board upon contribution by  
13 the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as  
14 determined by the board, based on the most recent actuarial valuation of the system.

15 (b) The board is the sole authority under this subsection (2) in determining what constitutes  
16 full-time public service.

17 (c) This service may not be credited in more than one retirement system under Title 19."  
18

19 **Section 25.** Section 19-13-804, MCA, is amended to read:

20 **"19-13-804. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in  
21 its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination  
22 at the board's expense. The examination must be made by a physician or surgeon at the recipient's place  
23 of residence or at another place mutually agreed on. Based on the results of the examination, the board  
24 shall determine whether the recipient has the physical or mental capacity to perform the duties essential  
25 elements required by the recipient's former position. If the board determines that the recipient is not  
26 incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability  
27 retirement benefit must be canceled. The board shall notify the recipient of this determination and the  
28 cancellation of the recipient's benefit.

29 (2) The cancellation of a disability retirement benefit because a member is no longer incapacitated  
30 does not prejudice any right of the member to a service retirement benefit."



1           **SECTION 26. SECTION 19-20-409, MCA, IS AMENDED TO READ:**

2           **"19-20-409. Transfer of service credits and contributions from public employees' retirement**  
 3 **system.** (1) A An active member may at any time before ~~his~~ retirement make a written election with the  
 4 retirement board to qualify in the teachers' retirement system all of ~~his~~ the member's previous creditable  
 5 service in the public employees' retirement system. The amount that must be paid to the retirement system  
 6 to qualify this service under this section is the sum of subsections (2) and (3).

7           (2) ~~The~~ In addition to the amounts directly paid or transferred by the member under subsection (3),  
 8 the public employees' retirement system shall transfer to the teachers' retirement system an amount equal  
 9 to 72% of the amount ~~determined in accordance with subsection (3)~~ payable by the member.

10           (3) The ~~employee member~~ shall pay either directly or by transferring contributions on account with  
 11 the public employees' retirement system an amount equal to ~~his~~ the member's accumulated contributions  
 12 at the time ~~he terminated that~~ active membership ~~under 19-2-601~~ was terminated, plus accrued interest.  
 13 Interest must be calculated from the date of termination until payment is received by the retirement system,  
 14 based on the interest tables in use by the public employees' retirement system.

15           (4) A member who qualifies service from the public employees' retirement system in the teachers'  
 16 retirement system must complete 5 years of membership service in the teachers' retirement system to  
 17 qualify or purchase military service, out-of-state teaching service, employment while on leave, and private  
 18 school employment.

19           (5) The retirement board shall determine the service credits that may be transferred.

20           (6) If a an active member who also has creditable service in the public employees' retirement  
 21 system dies before ~~he qualifies~~ qualifying this service in the teachers' retirement system and if ~~his~~ the  
 22 member's service credits from both systems, when combined, entitle ~~his~~ the member's beneficiary to a  
 23 death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before  
 24 payment of the death benefit, the public employees' retirement board must transfer to the teachers'  
 25 retirement system the contributions necessary to qualify this service in the teachers' retirement system as  
 26 provided in subsections (2) and (3).

27           (7) If the retirement board determines that an individual's membership was erroneously classified  
 28 and reported to the public employees' retirement system, the member's accumulated contributions and  
 29 service must be transferred to the teachers' retirement system and any employee and employer  
 30 contributions due as calculated in 19-20-602 and 19-20-605 are the liability of the employee and the

1 employing entity where the error occurred, respectively.”

2

3 NEW SECTION. Section 27. Codification instruction. [Section 2] is intended to be codified as an  
4 integral part of Title 19, chapter 2, part 4, and the provisions of Title 19, chapter 2, part 4, apply to  
5 [section 2].

6

7 NEW SECTION. Section 28. Severability. If a part of [this act] is invalid, all valid parts that are  
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
9 applications, the part remains in effect in all valid applications that are severable from the invalid  
10 applications.

11

12 NEW SECTION. Section 29. Retroactive applicability. (1) [Section ~~43~~ 14] applies retroactively,  
13 within the meaning of 1-2-109, to any service performed by an individual for a county sheriff's department.

14 (2) [Sections 5, 7, ~~9, 11, 12, and 14~~ through ~~17~~ 12, 14, 15, 18, 20, 23, AND 25] apply  
15 retroactively, within the meaning of 1-2-109, to initial disability determinations and reviews of ongoing  
16 disability status on and after January 1, 1994.

17

18 NEW SECTION. Section 30. Effective date. [This act] is effective on passage and approval.

19

-END-